

times hereafter saving and reserving to herself all and all manner of benefit of excep-
 tion to the numerous errors, misstatements and imperfections of the said Bill: in
 answer thereto, or to so much thereof as she is advised it is material for her
 to answer: answering, says, That she is entirely ignorant whether the tract
 of land in the Bill mentioned, was ever sold by her deceased husband James
 Herbert to Robert Curley, or to any other person, or whether any contract or
 agreement for the sale thereof was ever made or entered into by her said
 husband - As far as she knows and believes: it is not true that the said
 Robert Curley was ever put by the said James Herbert into possession of
 the land aforesaid by virtue of any contract for the sale thereof, nor that
 any sum of money whatever was at any time paid by the said Curley or re-
 ceived by the said Herbert, in consideration of such a sale. Your respon-
 dent denies that any application was ever made to her to join in a conveyance
 of the land aforesaid to any person whomsoever, or that she ever in any wise
 consented to become a party to any such instrument. She moreover denies
 that she knowingly ever received any sum of money, on account of her interest
 in any land alleged to have been sold by her said husband to Robert Curley
 or to any other person - Without that that &c In consideration of
 all which said matter and premises Your respondent humbly &c

Corporation of Norfolk to wit: }

Dinah Herbert *(Sd)*

Dinah Herbert personally appeared before me an Alderman of the said
 Corporation and made that the matters and statements set forth in the fore-
 going answer are true to the best of her knowledge and belief

Given under my hand and seal this 21st day of May, 1822

Wm Gammon *(Sd)*

Virginia: At a late Superior Court of Chancery held at the late former
 Capitol in the City of Williamsburg the 27 Feb. 1820

Alex Wilson and Ro Maitland

Pts.

James Davis and Mary his wife & others

Defts.

By consent of parties the bill in this cause is amended charging
 the death of Thos. Armistead, and inserting the name of Jas. Hodge as a de-
 fendant, who filed his answer, to which the plaintiffs replied generally; and leave
 is given to amend the bill and make new parties, whereupon they filed the same;
 and the Respondt Ben. Deane is assigned guardian to the infant Respondants to
 defend them in this suit and the said defendants therein named filed their an-
 swers, to which the plaintiffs replied generally

Suppl Bill

To the honorable Judge of the Chancery District Court directed by Law to be holden
 at the former Capitol in the City of Williamsburg
 Humbly complaining shew unto your honor your Orators Alex and R Wilson

and Robert Maitland - That your Orators filed their bill in this honorable Court against a certain James Davis and Nancy his wife and a certain John Hodges, in which bill your Orators charged, that a certain James Herbert of Norfolk County deceased under the will of his father Henry Herbert was entitled to a certain piece of Land lying between the Great Bridges near (Norfolk) and some time in the year made sale thereof to Robert Burley in consideration of a sum of money paid or to be paid to Herbert; that Burley under the agreement was put by Herbert into possession of the land; held it for many years, and about the year 1794, sold it to Wm. Pennock and delivered to him possession thereof; that Pennock retained possession and enjoyed thereof for years and afterwards conveyed the same Land to your Orators and a certain Theodorick Armistead the survivors and survivors; upon certain trusts set forth in the bill: that your Orators afterwards sold the said Land to a certain John Hodges at the price of \$1500. and put him in possession thereof. The said bill further represented, that no deed of conveyance for the said Land was executed by Herbert to Burley, and the said Herbert had died leaving a widow Dinah and four children (Nathaniel who has since died intestate and without issue; Christopher who went to sea and has not been heard of for more than seven years and an infant whose name was unknown to your Orators and who died under age and without issue and Nancy wife of James Davis; that your Orators applied to the heirs of Herbert to execute a deed to Hodges, and the widow and one of the heirs were willing to do so, but James Davis and wife refused to do so, and Hodges refused to pay for the Land until a title could be made - the bill prayed that Davis and wife might be compelled to join in a conveyance to Hodges, and that Hodges might be decreed the sum bid by him for the Land all which will more fully appear on reference to said bill and the proceedings thereon to which your Orators beg leave to refer your honor. - By way of amendment and supplement to that bill your Orators charge that the said Robert Burley although he was fully satisfied and paid for the Land aforesaid by the said William Pennock did not execute a deed therefor conveying the same; but died without having done so in April 1800, leaving as his heirs at Law four children to wit: Patsy now alive the wife of Benjamin Means, Richard who 19 or twenty years ago went to sea and has never since been heard of and left no issue; Mary who died intestate and without issue about the year 1817, and Robert who died about 1823, intestate leaving a daughter Reta Ann now a minor. your Orators also state, that Theodorick Armistead, one of the trustees departed this life some time in the year 18 -

In tender consideration whereof and as your Orators are without relief in the premises but to the aid of a Court of Equity. To the and therefore that the said Benjamin Means and Patsy his wife and the Reta Ann Burley being an infant by a guardian to be assigned her may be made parties

respondents to this Bill and to the Original Bill and May on oath answer all the allegations of this and the original Bill, that they may be compelled to convey the property aforesaid to your orators or to the said John Hodges, and that your orators may have such other and further relief as can be with equity &

Taylor Jpy
Ex

Answer of
Hodges

The answer of John Hodges, to the bill of Complaint of Alexander Wilson and Robert Maitland exhibited in the Chancery District Court, directed by Law to be filed at the former Hospital in the City of Williamsburg

This respondent, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the complainants said bill of Complaint contained for answer therunto, or unto so much thereof as materially concerns this respondent to make answer unto; he answereth and saith, That it is true, that under and by virtue of the Act of William Pennock mentioned in the bill the Land in the bill mentioned was sold at public Auction on or about the 27th day of December 1810 by Alexander Wilson Robert Maitland and Theodorick Arminster, the said Land was purchased by Theodorick Arminster at the price of fifteen hundred dollars; and a few days after by consent of parties this respondent agreed to take the purchased off the hands of the said Theodorick Arminster, and to be considered the purchaser in his stead, and by virtue of this contract this respondent was put in the possession of the said Land, and has thenceforward continued to hold and enjoy it. This respondent has at all times been ready and anxious to pay the purchased money and to obtain a title to the Land, But the trustees of the said Pennock have never yet been enabled to make him a good and legal title to it, after he was put in possession to wit; on or about the said 27th day of December 1810 a writ of right was instituted against him in the Superior Court of Law for Norfolk County by George Davis and Ann his wife and Rinald Herbert

at the October term in the year 1820, the Suit was tried, and a judgment rendered for the demandants, Your respondent has carried the cause to the Court of Appeals where it is now depending, This respondent repeats that when a clear title can be made to him for the Land he is ready, as he has at all times been to pay the purchase money, but as other persons claim title to it, and have recovered a judgment he hopes to be protected by the Court, if their title should prevail. Without that, that there is any other matter or thing material or necessary for this respondent to make answer unto, and not herein and hereto well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, all which matters and things this respondent is ready, to aver and prove as this Honorable Court shall direct and award, and humbly prays to be hence discharged with his reasonable costs and charges in this behalf most wrongfully sustained

John Hodges

Norfolk County to wit:

On this thirteenth first day of May in the year of our Lord eighteen hundred and twenty and before me Stephen Wright a Justice of the peace for the County aforesaid appeared John B. Pyles who made oath that the statements in the above answer contained are true to the best of his knowledge, and that he believes the same to be true. In Witness whereof I have hereunto set my hand and Seal the day and year above mentioned.

Stephen Wright *Justice of the Peace*

Ans. of
Burley

The answer of Reta Ann Burley, an infant by Benjamin Deans a signed as guardian to defend her to a bill exhibited in the Chancery Court of Williamsburg by Robert Mailland and Alexander Wilson against this respondent father.

Ans. Bill

This respondent saving and reserving all benefit of exception to the said Bill in answer thereto said that it is true that Robert Burley being in possession of the Land in the bill mentioned, sold the same to Wm. Pennock, who paid the said Burley therefor and this respondent does not claim any right or title in or to the said Land, and submits to the Court to make such decree as may be deemed proper, that it is also true that Robert Burley left four children mentioned in the bill, and your respondent is the daughter of Robert Burley therein named as the son of Robert Burley, and that Mary and Richard have both died intestate and without issue, without that he

Sworn to before me an Alderman of
the Borough of Norfolk this 13 day of
January 1825

Benjamin Deans

Acting as Guardian for Reta Ann Burley

W. B. Deans

Ans. of
Deans

The answer of Benjamin Deans and Patey, his wife to a bill exhibited in the Chancery Court of Williamsburg by Alexander Wilson and Robert Mailland against them and others

These respondents now and at all times saving and reserving to themselves all benefit of exception to the said bill, in answer thereto say that it is true that Robert Burley being in possession of the tract of Land in the bill mentioned sold the same to William Pennock, who paid the said Burley therefor, that these respondents do not claim any right or title in or to the said Land, and submit to the Court to make such decree as may be deemed proper, that it is also true that Robert Burley left four children mentioned in the bill, as his heirs, all of whom are dead (except your respondent Patey) intestate and without issue except Robert who left a daughter Reta Ann now a minor, without that that any other matter or thing in the bill is true &c

Sworn to before me an Alderman of the
Borough of Norfolk this 13 day of January
1825.

Benjamin Deans for
self and wife

W. B. Deans

" "

And at a Special Session of the Circuit Superior Court of Law and Chancery held for James City County and City of Williamsburg (to which Court the records of the late Superior Court of Chancery held in Williamsburg have been transferred by operation of Law) the 4th July 1833.

On motion of the plaintiff by counsel, leave is given them to amend their bill and make new parties, whereupon they filed the same and said, Hodges is a pignor, guardian to defend the infants Ann, George H. Amanda Hodges and Jas. Deans is a pignor and guardian to the infants Reta Ann Burley, and James and Caroline Deans.

Am. Bill

To the Honorable the Judges of the Circuit Superior Court of Law and Chancery for the County of James City: Humbly complaining shew to your Honor your Oration Alexander Wilson and Robert Maitland that in the year 1822 they filed their bill in the late Superior Court of Chancery for the District of Williamsburg (the papers of which have been transferred to this Court by virtue of the Act of Assembly in such case made and provided) against John Hodges, James Davis and Nancy his wife and Dinah Herbert, which in substance alleged that James Herbert the husband of the said Dinah and father of the said Nancy, in his life time, being the fee simple owner of a piece of Land in the County of Norfolk, had sold the said Land for a valuable consideration which he had received, to and Robert Burley in the year 1794 and that the said Burley, afterwards in the year 1794 or 95 had sold the same to Mrs. Pennock, but that no deed could be found from either of those persons to Pennock, that Pennock subsequently conveyed the same Land to your Oration and one Theodrick Armistead, who was dead at the filing of the said bill, in trust to be sold for the payment of his debts: That the said trustees in pursuance of the trust did sell the said Land to one John Hodges at the price of fifteen hundred dollars who received possession of the said Land and had from the time of the sale received the profits thereof, but had refused to pay the consideration money until the title to the Land could be secured to him by a deed executed by the proper parties. The object of the bill was to procure a release from the said James Davis and Nancy his wife and Dinah Herbert to the said Land and to compel the said Hodges to pay to your Oration the said sum of fifteen hundred dollars, with interest thereon from the date of the purchase. Afterwards by leave of the Court your Oration filed an amended bill making Benjamin Deans and Patsy his wife and Reta Ann Burley which said Patsy and Reta Ann were the heirs at Law of Robert Burley, who had died before that time: parties and praying that they might make a conveyance of the property aforesaid to your Oration, or to the said John Hodges. Sundry proceedings were had in the said cause, all of which will be seen by reference to the papers. At the present term leave was given to your Oration to amend their former bill and to make new parties, In pursuance of which your Oration by way of amendment to their former bill

respectfully allege that ~~very~~ recently and since the last continuance of this cause they have discovered among the records of the County of Norfolk County, the papers in a suit brought therein in the year 1796 by Wm. Pennock against the said Dinah Herbert widow of the said James Herbert and Ann (or Nancy) Christopher, Nathaniel, James and Ryan Herbert children of said James Herbert and Robert Curley, the bill in which case alleges that on the 2nd of August in the year 1774 Robert Curley, purchaser of James Herbert conveyed a tract of land (being the very tract which is the subject of dispute in your Orators original and amended bill) situated on the east side of the Southern Branch of Elizabeth River in the Parish of Saint Brides (in the County of Norfolk) nearly opposite to the Gasport Land and containing by estimation forty acres more or less, that in consequence of said purchase the said Curley did actually pay to the said Herberts and hundred pounds in a bond, as per his receipt filed with the bill, in which receipt the said James Herbert bound himself and his heirs to make a title to the said Curley or his assigns on demand or when called for: that after the said transaction the said James Herbert had died intestate, having made no deed for the said Land; that he left a widow the said Dinah, and the children above mentioned. It further states that the plaintiff Pennock had purchased the said Land from Curley, and has obtained an assignment of his right thereto, the assignment being endorsed on the foregoing mentioned receipt. It prays that the widow and children of James Herbert and Robert Curley should be compelled to convey the saids in fee simple to the plaintiff, to wit the children after their arrival at age and the said Curley and the widow immediately, unless she should affect on account of her Dower. The said Dinah Herbert put in an answer to the said bill, in her own right and as guardian ad litem to the infants, in the first of which she states that she is sensible her said husband did bargain and sell his tract of Land on the Southern Branch in the Parish of Saint Brides to Robert Curley in fee as set forth in the bill of complaint: that she also admits her said husband did receive the payment stated in the bill in a bond, at which time he granted a receipt or paper thereof and containing an assurance that the said Land should be conveyed to the said Curley or his assigns when required; that since that transaction her said husband had died intestate, leaving her and the children mentioned in the bill of complaint, without having executed any deed for the said Land: that she believed the plaintiff had purchased the said Land from Curley, and has procured his assignment. She then concluded by stating that "your defendant having always intended to fulfil the contract of her said husband during his life, feels it no less her inclination since his death, and

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and is therefore willing and ready as her right extends in said Land to execute any release or conveyance that shall be deemed requisite". Her answer on behalf of the children states "that they believe all and singular the allegations set forth in the said bill are true". The answer of Burley distinctly "admits that he purchased the Land mentioned in the bill from James Herbert, obtained the assurance there stated for the title and that he has since sold it to the complainant, has received the consideration and assigned the said obligation; that he was willing and ready on his part to execute either a deed or release to the said complainant in order to perfect the title in fee simple to the said Land to the complainant". The cause coming on to be heard, the Court decreed that Dinah Herbert and Robert Burley execute a deed of release to the complainant of all their right, title, interest and property in the forty acres of Land more or less, situated on the East side of the Southern Branch of Edgewater River, in the Parish of Saint Brices, nearly opposite the Lands of Gosport, which was purchased by the said Robert Burley of the said James Herbert in the year 1794 in the bill mentioned and that the said defendants Ann, Christopher, Nathaniel, James and Lydia Herbert when they shall arrive to the age of twenty and years, do severally transfer by deed in fee simple all their right interest and property in the said Land to the complainant, unless they shall show good cause to the contrary within six months after their attaining to such age". A copy of the record of the said suit your Orators file herewith as a part of this bill. They aver that the said decree remains in full force and effect, in no wise annulled or reversed; It has however never been carried into execution by a conveyance as directed either from Dinah Herbert, Robert Burley or the other defendants, so far as they have been able to ascertain. This they presume was owing to the loose practice in such cases prevailing in the County Courts generally. (Your Orators allege that John Hodges Dinah Herbert and Patsy Deans defendants to the original and amended bills are dead, all of them intestate. John Hodges left five children to wit: Samuel L. John M. Ann, George and Amanda Hodges upon whom the Land aforesaid descended, Samuel L. Hodges has administered upon the estate of his father in the County Court of Norfolk and has reduced into his possession the personal estate, which was very considerable; much more than sufficient to pay his debts. Dinah Herbert left an only child Ann or Nancy Davis, who by the death of her brother & sister as well as her mother is the only surviving heir of James Herbert Sen. dec. and of his widow and other children. The estates of James Herbert and Dinah Herbert for want of administration have been committed by the County Court of Norfolk to Mordecai Locke Sheriff thereof. Patsy Deans left six children to wit: John, Thomas, Julia wife of John Thomas, Mary Ann wife of Edward Gray, James and Caroline her heirs at Law. In tender consideration of your Orators cases they pray that the said John

Mr. Hodges, Ann Hodges, George Hodges and Annanda Hodges and Retta Ann Burley a debt in the former amended bill who together with the said Ann, George and Annanda Hodges are infants, by some person to be assigned guardian to defend them in this suit, the said Samuel Hodges as heir and adminr of John Hodges deceased, Modicai Crook committee of the estate of James Herbert Senr. and Dinah Herbert, John Deans, Thomas Deans Edward Gray and Mary Ann his wife, John Thomas and Julia his wife, James and Caroline Deans infants by some person to be assigned guardian to defend them in this suit, James Davis, and Ann his wife May be made parties defendants to this bill and may answer all and singular its allegations; that the decree of the County Court above mentioned as well as the prayer of the Original and amended bills may be carried into full and complete effect by a release or other conveyance of the said Land from James Davis and Ann his wife and John Thomas, James and Caroline Deans, John Thomas and Julia his wife Edward Gray and Mary Ann his wife and Retta Ann Burley to your Orators or to the heirs of John Hodges dec.; that the administrator of John Hodges may pay to your Orators the said sum of fifteen hundred dollars with interest thereon from the 24th of December 1810 (the date of the purchase by the said John Hodges of the Land aforesaid) till paid, and that such other and further relief may be had as consistent with Equity. May it please the Court to issue the common law writ of Subpoena —

Chandler Jpg

At a Court held for Norfolk County the 21st day of March 1798

William Pinnoke

against

compt-

Dinah Herbert widow of James Herbert, Ann Christopher, Nathaniel, James and Lydia Herbert children and orphans of the said James Herbert and Robert Burley

Def.

In Chancery

what filed
with am?
Bill

This day came as well the complainant as the defendants Dinah and Robert in their proper persons and the other defendants who are infants by the said Dinah who is appointed their guardian to defend them in this suit, and therefore on by consent the cause came on to be heard on the bill and answers now filed: on consideration whereof and of the argument of counsel, It is Decreed and ordered that Dinah Herbert and Robert Burley execute a deed of release to the complainant, of all their right, title interest and property, in the spot, acres off river, in the parish of Saint Andrew, nearly opposite the lands of Gosport which was purchased by the said Robert Burley of said James in the Year 1792 in the bill mentioned, and that the said defendants Ann, Christopher,

Nathaniel, James and Lydia Herbert when they shall arrive to the age of twenty and years do severally transfer by a Deed in fee simple all their rights, interest title and property in the said Land to the complainant unless they shall change mind to the contrary within six months after their attaining to said age and that the parties bear their own costs ~ ~ ~

To the worshippful the Justice of the County of Norfolk sitting in Chancery humble complaining sheweth unto your worshipps your Orator William Pennock that on the 2nd of August 1794 Robert Burley purchased of James Herbert a tract of Land situated on the East side of the Southern Branch of Elizabeth River in the parish of St Brides nearly opposite to the Gosport Land and containing by estimation forty acres more or less; that he was to pay the sum of one hundred and twenty pounds for the same, being the whole amount of the consideration money; that in consequence of said purchase the said Burley did actually pay to the said Herbert one hundred pounds in a bond as for his rect. which is hereto annexed and which is prayed to be taken as a part of this bill of complaint will appear in which too the said James binds himself his heirs &c to make a title to the said Burley or his assigns on demand or when called for: Your Orator further sheweth that since the said transaction the said James Herbert hath died intestate having made no deed for the said Land and premises with the appurtenances: That he hath left a widow Dinah Herbert and the following children, Ann, Christopher, Nathaniel, James and Lydia, which said children are under the age of twenty and years, that in consequence of his having so died without making a conveyance for said Land the same descended to the said children in fee, subject to the dower of their mother therein, agreeably to the rules of Law. He further sheweth that he hath purchased the said Land and premises with the appurtenances from the said Robert Burley and hath obtained his assignment of his right and title thereto, the said assignment being endorsed on the foregoing stated Rect. and obligation will more fully appear, that by virtue of said purchase and assignment altho the legal title is in said children, yet he advises that the equitable title being in him a Court of Chancery has authority to decree a title to be made by the said children after their arrival at age, their mother being conscious of the sale having been made by her said husband for a valuable consideration, is willing as he is informed to pass all her right therein, but the infancy of the said children renders the interposition of Equity necessary. In tender consideration of the premises, for as much as your Orator is without relief at Law and can only have his title secured to him in Chancery, where specific execution of such contracts are enforced, Courts of Law being inadequate. To the and therefore that the said widow and children and the said Robert Burley whom he prays may be made parties and defendants hereto may answer all and singular the premises, and that by a Decree by your worshipps be made the said widow and children be compelled to convey the said Land and premises with the appurtenances in fee simple to your Orator to wit: the children after their arrival at at age and the said widow immediately unless she effects from her claim for her dower, and that the said Robert Burley be decreed to release to your said

Crator all the right and title of him the said Robert to the said Land under the purchase he made of the said James Herbert, may it please your worship to grant to your worship the commonwealth the most gracious writ of Subpoena to the said persons to be directed, commanding them to appear before you and to stand to abide by and perform such order and decree as shall be made herein for your Crator relief and that you will grant such other and further relief as so shall be consistent with Equity and good conscience: and your Crator will pray &c &c ~ ~ ~

ans. of
D Herbert
to am? bill

The answer of Dinah Herbert widow and relict of James Herbert, To the Bill of Complaint against herself, her children and Robert Curley, in the Court of Norfolk County, by William Pennock ~ ~ ~

This Defendant so far as requisite for her to answer in her individual capacity doth answer and say. That she is sensible her said husband did bargain and sell his tract of Land on the Southern Branch in the parish of St. Andrew to Robert Curley, in fee as is set forth in the Bill of Complaint; that she also admits her said husband did receive the payment stated in the Bill in a bond, at which time he granted a receipt expressed thereof and containing an assurance that the said Land should be conveyed to the said Curley or his assigns when required: that since that transaction her said husband died intestate leaving her and the children set forth in the Complaint, without having passed any deed for the said Land. she also believes that the complainant hath since that period purchased the same of the said Curley and hath procured his assignment. Your Defendant having always intended to have fulfilled the contract of her said husband during his life, feel it no less her inclination since his death and is therefore willing as far as her right extends in said Land to execute any release or conveyance that shall be deemed requisite she however refuses to pay any proportion of the costs ~ ~ ~

Test
Alex. Wilson
William Herbert }

Dinah Herbert

ans. of
Herberts to
am? bill

The answer of Ann, Christopher, Nathaniel, James and Lydia Herbert orphans of James Herbert by Dinah Herbert their mother and guardian to defend them; To the bill of Complaint exhibited against them and Robert Curley in the Court of Norfolk County by Wm Pennock ~ ~ ~

These Defendants by their said Guardian saving to themselves all benefit of exception to any error or imperfections that may be contained in the said Bill of Complaint in answer thereto do say ~ That they verily believe that all and singular the allegations set forth in the said Bill are true: that therefore they can offer no reason or just objection to a Decree passing in favour of the complainant as he hath prayed so far as they are concerned: they however hope that any right they may have will be saved and protected to them by the Court and

that no costs will be charged against them

Teste
Alex Wilson
William Herbert

Pinck Herbert
for
the Orphans

Norfolk County August 23 1794

Then received of Mr. Robert Curley a bond of one hundred pounds which was due him from Bascha Butt and Robert Butt dated April the 12th 1792 in part payment for a piece of Land lying on the Eastward side of the Southem Branch which I bind myself my ~~own~~ ^{own} executor and assigns to make a lawful right unto Robert Curley his ~~own~~ ^{own} executor or assigns when called on

In presence of
Thos. Tatum

James Herbert

I hereby assign all my right and title to the within mentioned Land to William Pennack for the sum of one hundred and eighty pounds received of him for the due performance of which I bind myself my heirs, executor and assigns in the penal sum of three hundred and sixty pounds

Witness
Jas Taylor Jr
Alex Wilson

Robert ^{his} Curley
mark

Copies Teste Wm A. Wilson etc

Ans. of
Rob Curley
to am^d bill

The answer of Robert Curley to the bill of complaint exhibited against him and the widow and children of James Herbert in the Court of Norfolk County by Wm Pennack

(This Defendant doth answer and say: that he admits that he purchased the Land mentioned in the bill from Jas Herbert, obtained the assurance thereof for the title and that he hath since sold the said Land to the complainant hath recd the consideration and assigned thereof obligation. that therefore he is ready and willing on his part to execute either a deed or release to the said complainant in order to perfect the title of the same of in and to the said Land and premises with the appurtenances in him the said complainant in such manner as the Court shall see fit to direct the same

Teste
John Miverson

Robert ^{his} Curley
mark

The above answer of Curley was
admitted to be copied in to
H. H. H.

Copy Teste Wm A. Wilson etc

Ans. of Peter
Ann Curley

The answer of Peter Ann Curley, James Deane and Caroline Deane infants by John Deane assigned Guardian to defend them in the suit brought against them and others by Robert Maitland and Alex Wilson and now pending in the Circuit Superior Court of Law and chancery for the County of James City. These respondents for answer to the bill of the complainants say that they know nothing of the material matters charged in the said bill, and that they rely upon the Court to protect their rights if any they have

John Deane

The answer of Samuel Davis and Maney his wife to the amended bill against them and others, of Robert Maitland and Alexander Wilson in the Circuit Superior Court of Law and Chancery for the County of James City. These respondents for answer to the said bill, say that they cannot deny the truth of the records of Norfolk County Court in the case of Mrs. Pennek against Quash Herbert and others, filed as a part of the amended bill, and being desirous of having the said suit terminated, they submit it to the Court for such an order as it may deem correct. They consent that the cause should be disposed of at the next term of the Court. August 30. 1853 —

Sam. Davis }
Ann Davis }
" " }

Ans. of
S. Hodges

This answer of Samuel Hodges and of the heirs of John Hodges and admr. of the said John Hodges decd and as admr. of the infant defendants to a bill of complaint exhibited against him and others in the Superior Court of Law and Chancery for the County of James City, by Alexander Wilson &c —

This respondent now and at all times hereafter saving and reserving unto him all manner of benefit of exception to the said Bill for its manifest errors and imperfections in answer thereto, or to so much thereof as he is advised it is necessary or proper for him to answer unto, doth aver and swear that he admits the death of John Hodges his father, and that he is one of his heirs and admr. of his estate — He also admits that the plaintiffs as trustees did sell at public sale, the tract of Land in the bill mentioned, but he does not admit that the said John Hodges became the purchaser at that sale; on the contrary, this respondent denies that the said John Hodges did become the purchaser at the said sale, but that the same was purchased by a certain Thos. Armistead, one of the trustees who has no legal right to make the purchase from himself, and the same was afterwards by verbal agreement between the said Armistead and the said John Hodges to be taken by the said Hodges, at the price for which it had been struck off or sold to the said Armistead. This deft now insists that the said verbal agreement between the said Armistead and the said Hodges, being about the sale of Land, is void under the Statute of Fraud and Perjuries which statute, this Defendant now relies on, as if the same was in and form pleading. And this Defendant insists that as the said agreement between the said Armistead and the said Hodges was not in writing, that he in his life time, was not bound by the same, and that this defendant as one of his heirs, and admr. aforesaid, is in like manner not bound by the said supposed agreement. And this Deft also insists that the said John Hodges did not make any contract in writing or otherwise binding on him, with the plaintiffs, or with them and the said Armistead, and that therefore the said Hodges in his life time, and this Deft. as his admr. and one of his heirs, is not bound by the same, and cannot legally be required to execute the same. In regard to the facts stated in the bill of file

sale by Herbert to Burley, by Burley to Pennock, by Pennock to his assignees and by those assignees to the said Hodges, and the decree of the County Court in favour of said Pennock, this Deft. knows nothing of his own knowledge. He does not admit them to be true and requires full proof of them, if his rights and interests as heir, distributed or adms, are to be affected by them. This Deft. is advised that it is obvious from the facts shown, that they cannot make a good title to the said Land, and that if they could, a decree for specific execution ought not to be made at this late day. The decree of the County Court referred to, is wrong, because no guardian ad litem was appointed for the infants, and because it is manifest that the purchase money was not fully paid to the said Herbert. This defendant states that a suit at Law was brought in the County of Norfolk, in the Superior Court of the said County, on behalf of George Davis and others as heirs of the said James Herbert against the said John Hodges in his life time, to recover the said Land, and at the term in 1820 they recovered a judgment for the said Land, on which the said John took an appeal to the Court of Appeals, where the case is still depending. A copy of the proceedings in the said County Superior Court is herewith filed as part of this bill. It is then obvious that the plaintiffs cannot make a title to the said Land.

This Deft. also states that about the year 1820 it was in the contemplation of the government of the United States to extend their publick establishment on the said Land; but finding this difficult in the title, that determination was abandoned, and the said establishment was extended in some other direction. This defendant offers this as a further reason why the said supposed agreement should not be executed and this deft insists that the plaintiffs claim is barred by the Act of Limitations, which act is relied on as if formally pleaded. This deft claims no title or interest in the said Land, and if any right was existing under the said supposed agreement the same is abandoned. And having answered he prays to be heard as witness, with costs &c without that &c

City of Williamsburg to wit

Samuel L. Hodges personally appears before me Roscoe Dole an Alderman of said City, and made oath that the matters stated in the foregoing answer so far as they depend on his own knowledge or belief are true, and so far as they depend on the knowledge or belief of others he believes them to be true. Given under my hand and seal this 30th Decr. 1833

Roscoe Dole *alderman*

copy of
Mr. Herbert

The deposition of Maximilian Herbert, taken at the office of Robert C. Taylor in the Borough of Norfolk on the 2nd day of July 1825 pursuant to the annexed notice and by virtue of the annexed commission, to be read in evidence in the suits in said commission mentioned. The deponent of Raufut age being duly sworn oath: That he is well acquainted with James Herbert deceased, who was his uncle; that he the said James Herbert resided for many years, on a piece of Land nearly opposite to Gosport which Robert Burley, afterward sold to William Pennock, and which was afterward sold by Pennock's Trustees to the

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defendant John Hodges, who is now in possession of it. That James Herbert
quit the possession of the property and delivered it to Robert Curley, the said
James Herbert removing to the Borough of Norfolk at the distance of about a
mile or a mile and a quarter from the Land, and continued to reside in Norfolk
until his death - that the said Curley has previously resided in Prince Anne
County about eight miles distant from Norfolk, and removed from Prince
Anne to the piece of Land upon which Herbert has resided. That in the
year 1795 this defendant on behalf of William Pennock, made a contract
with the said Curley (who was then a Carpenter in the employ of this defendant)
for the purchase of the said Land upon which James Herbert had formerly
lived and upon which Curley then resided. and paid the said Curley two
hundred dollars in part of the purchase money, and referred him to
Mr. Pennock for the balance - Curley afterward put Pennock in possession
of the Land, who continued to hold it until it was sold by his (Pen-
nock's) Trustees and purchased by the defendant Hodges who continues to
hold it to this day. During the time that Curley held the Land, he claimed
title to it, under a purchase from James Herbert, and defendant would
not have bought it for Pennock, unless he had believed that Curley had title
to it. It was generally understood and believed that Curley had bought
the Land of James Herbert, nor did he ever hear until within a few years
of any claim being set up to the Land by James Herbert or his heirs. While
Mr. Pennock was in possession of the Land, the house which was upon the
Land and which had been blown down before his purchase was furnished
by him; the house being left unfurnished by Herbert. The said Pennock
also built a small Kitchen upon the Land. In consequence of some dis-
agreement between Pennock and Laton or some other person who held
the contiguous Land (Mr. Pennock had a survey made of the Land, at which
defendant attended to show its boundaries: That James Herbert left a widow
Dinah Herbert a daughter named Ann, now the wife of James Davis
the defendants - and three sons Christopher, Nathaniel and James,
all of whom are dead (except the said Dinah and Ann)

Questions by plaintiffs counsel

Q. Did you ever hear any declarations made by the widow or any of
those children of James Herbert of their belief that their father had received
a payment for the Land from Curley

A. I did not, through them, but I heard from others that Nathaniel
had said that he believed that his father had been paid for the Land; and that
he did not care a damn about it.

Q. Of whom did you hear it

A. I heard it from Edward Dixton, I think?

Q. How many years had Curley been in possession of the Land when Pennock
purchased it of him

A. I do not know exactly. I do not think it was more than two years. The defendant James Davis & wife and Dinah Herbert by their counsel waiving all objections to said deposition for want of notice and commission, reserved all other exceptions thereto. The plaintiff by their counsel requires that the return of the exceptions should be stated at this time, but the counsel for the defendants & friends declined so to do, and proposed the following interrogatories.

Q. Do you know when James Herbert died?

A. I do not.

Q. Was he dead or alive when you made the contract with Burley for Pennock.

A. I do not know.

Q. Were you intimate with James Herbert.

A. I was intimate with him until he moved from the land upon which Burley afterwards lived.

Q. Do you know any thing of your own knowledge of any sale of that land in controversy from Herbert to Burley.

A. I do not.

Q. Do you know that Burley was ever placed in possession of the said land, under any sale thereof or contract for the sale thereof?

A. I do not. Only from Burley's saying so.

Q. When you say in the body of your deposition that Burley claimed title to the land, what do you mean particularly.

A. I mean that Burley said that he had purchased it from James Herbert and all the persons in that neighbourhood understood that Burley had purchased it, but I never heard James Herbert say any thing about it.

Maximilian Herbert.

Dep. of
Q. Herbert. The deposition of Mrs Dinah Herbert taken on Tuesday, the 1st day of September 1827 between the hours of 9 A.M. and 4 P.M. by virtue of the annexed notice and pursuant to the annexed commission, to be read in evidence in a suit now pending in the Chancery Court of Williamsburg wherein Robert Maitland and Alex Wilson are plaintiffs, and James Davis and Nancy his wife and John Dodge, and the said Dinah Herbert are defendants.

The defendant reserves to himself all legal exception to the matter and form of this deposition, and to the examination of this witness. The deponent being duly sworn states that she is the widow of James Herbert deceased, who departed this life many years since, and at his death left six or seven children whose names are as follows: Anne (wife of James Davis) Christopher, Nathaniel, James and Lydia. Anne is the only and most allied, the others died without issue. That she lives on the land appraised to her husband and is the owner of said land now in controversy as she believes.

Q. Did you know Robert Burley?

A. I never knew such a man.

Q. Did you ever hear of a man named Robert Burley?

- A. I never heard of such a man in my life.
- Q. Did you ever hear your husband speak of such a man as Robert Burley?
- A. I do not recollect that I ever did.
- Q. Where did your husband reside, when he removed from the Raid opposite the Navy Yard?
- A. He removed to Norfolk.
- Q. Did you know William Pennock?
- A. Not personally, but I have frequently heard of him.
- Q. Did not Wm Pennock remove to the Raid above mentioned, when your husband removed from it?
- A. I cannot say, I know nothing about it.
- Q. Will you look at the annexed paper, and say if the signature "Dinah Herbert" attached thereto is in your proper hand writing?
- A. It is not my writing.
- Q. Can you write?
- A. I could write and, but in consequence of my advanced age I write now with great difficulty.
- Q. Will you swear that the signature Dinah Herbert to the rec^d above mentioned is not in your hand writing?
- A. I will swear that it is not.
- Q. Will you be good enough to say in what the signature Dinah Herbert, in the above receipt differ from yours?
- A. I write a smaller hand.
- Q. Did you ever sign any doc^s for the Raid above alluded to?
- A. I never did.
- Q. Did Mr. Anand Reid ever present you with a doc^s to sign?
- A. I cannot say, I do not recollect.
- Q. Did you have any conversation with your Son Christopher on the subject or Nathaniel; that is about the Raid alluded to?
- A. I never did to my knowledge.

Dinah ^{her} Herbert
mark

Norfolk Dec

I Frederick Vincent a Notary Public in and for the District aforesaid, by lawful authority duly commissioned and sworn, do hereby certify, that on Tuesday the 5th day of September in the year of our Lord 1827 at the Town of S. Davis in the City of Norfolk (which place was substituted in lieu of the place specified in the annexed notice by consent of parties) between the hours of 9 A.M. and 1 P.M. I took the deposition of Dinah Herbert, pursuant to the annexed notice, and by virtue of the annexed commission to be read as evidence in a suit depending in the Chancery Court of Williamstown whereon Rob. Maitland and Alex. Wilson are plaintiffs and James Davis and Mary his wife, John Hodges and Dinah White are defendants. The said Deposition, exhibit, notice and commission are herewith returned.

Which I attest

Frederick Vincent
Not. Pub.

exp^d of
J. Taylor

The deposition of James Taylor taken at the Office of Robert B. Taylor in the Borough of Norfolk, between the hours of 9 A.M. and 1 P.M. of the 23rd of July 1825, to be read in evidence in a suit now depending in the Superior Court of Chancery for the Williamstown District in which Alex. Wilson and Rob. Maitland are plaintiffs and James Davis and Nancy his wife and others are defendants.

The deponent of lawful age being duly sworn saith: That in the year 1795 this deponent was as he delivers in the service and employ of ^{Mr.} Pennock now deceased, then a merchant in the Borough of Norfolk, and that his employment consisted chiefly in receiving and disbursing the cash. That he is well acquainted with the hand writing of William Pennock and has often seen him write, and that the promissory note hereto attached, is written and subscribed in the proper hand writing of said ^{Mr.} Pennock. That the receipt on the back of the said note, dated on the 20th of September 1795 signed "Robert ^{his} Burley" is written throughout except the mark in this Deponent's hand writing - that he has no doubt that he paid the money therein mentioned to said Burley, because the receipt is in this deponent's hand writing, he was the cashier of Mr. Pennock when duty it was to pay, and he is satisfied that he would never have attested the receipt as a witness unless he had paid the money, or the said Burley had acknowledged the receipt in his presence - That the signature "La Taylor pr" to said receipt is in the proper hand writing of this deponent as the subscribing witness; the mark of said Burley was either made by said Burley in deponent's presence or acknowledged by said Burley to this deponent.

The Defs. James Davis and Ann his wife and Minck Herbert by their counsel reserving all exceptions, except mere formal exceptions to the reading of this deposition, proposed the following questions

Q. Do you recollect, that the mark subscribed to the receipt to which your name is subscribed as a witness, was made by Robert Burley in your presence or was acknowledged by him before you?

A. I do not. But I am satisfied, I would not have permitted any person to make a mark for another

Q. Do you recollect that the sum of money mentioned in the receipt was paid by you, or by any one in your presence to Robert Burley?

A. I do not.

Q. Were you acquainted with Robert Burley?

A. I do not recollect, If I was I have forgotten.

Cross examination by plaintiffs Counsel

Q. Although you do not recollect as you have said whether the mark to the receipt was made by Robert Burley in your presence or was acknowledged by him before you, are you satisfied that you would not have subscribed it as a witness unless Burley had either made the mark, in your presence or acknowledged it before you?

The defendants Davis and wife and Herbert by their counsel except to this question as a leading question

A. I do not think that I would or could have subscribed it as a witness unless Burley had either made the mark in my presence or acknowledged the same in my presence.

Q. Had you any doubt that the money mentioned in that receipt was either

paid by you to Burley, or that he acknowledges, that he had received it? The same defendants by their Counsel object to this as a leading question. A. I have not ~

The defendants above named by their Counsel take no objection for want of notice or commission ~

La^r Taylor p

I promised to pay Robert Burley or order on demand one hundred pounds value received in a piece of Land he purchased of James Herbert ~

W^m Pennock

Received Sept. 20th 1793 from Mr. W^m Pennock one hundred pounds the amount of the within note ~

Teste

La^r Taylor p

Rob^{ts} + Burley
mark
" "

exp^d of
W^m Wilson

The deposition of William Wilson taken by consent, at the Office of Robert B. Taylor in the Borough of Norfolk on the 22nd of July 1825 between the hours of 9 A.M. and 6 P.M. to be read in evidence in the suit in the annexed commission mentioning ~

The deponent William Wilson being duly sworn, saith: That he was well acquainted with Robert Burley deceased, that the said Burley resided for some time on a piece of Land on Elizabeth river near, opposite to Gosport which had formerly belonged to James Herbert - the time that said Burley lived on the Land he does not recollect, but it is many years ago probably thirty - during the time that Burley lived on the Land he claimed it as his own, as being purchased of James Herbert, and he knows that Burley applied to Andrew Kidd who was in the habit of drawing deeds to draw a deed from Herbert, for the Land. Burley afterwards as he acknowledged in presence of this deponent sold the Land to W^m Pennock deceased and desired Kidd to draw a deed from him to Pennock for the Land, which Kidd promised to do, and also promised to draw the deed from Herbert to Burley; whether the deeds were drawn, deponent knows not, or if drawn what became of them, but frequent searches have been made in the Office of Norfolk County Court of which this deponent is clerk, without finding them. That the Land above mentioned is the same Land bought by John Rogers of Pennock's Trustees - The deponent also states that James Herbert has lived on the Land previous to Burley's purchase of it. That he does not know that James Herbert or his heirs were ever in possession of the Land; after the alleged purchase by Burley ~

The defendants James Davis and Nancy his wife and Elizabeth Herbert wait.

69.
all objections to this Deposition for want of notice or commission and reserving
all other exceptions to the reading of this Deposition, proposed the following
questions —

Q. Do you know how many acres there are, in the piece of land, you speak
of? —

A. I do not —

Q. Do you know, what was the sum of money, to be paid for said land?

A. I do not —

Q. Do you know that Burley was ever placed by Herbert in possession of
the land, under any sale or agreement, for the sale thereof? —

A. I do not. I know that he has there claiming it under the purchase from
Herbert —

Q. Have you any knowledge whatever of the pretended sale from Herbert,
except that derive from the declarations of Burley and Kiddy? —

A. I have not

Cross Examination by plaintiffs counsel —

Q. Did Pennock have possession of the land after the purchase from Burley
by him? —

A. He did —

Q. Who has been in possession of the land since the sale by Pennock's
Trustees? —

A. The defendant Dodge —

Wm. Wilson

At a Circuit Superior Court of Law and Chancery, held for James City County
and City of Williamsburg (to which Court the records of the late Superior Court
of Chancery held in Williamsburg have been transferred by operation of Law)
on the 12th of April 1834 —

For reasons appearing to the Court, It is ordered that this cause be trans-
ferred to the Circuit Superior Court of Law and Chancery for Elizabeth City County.

At a Circuit Superior Court of Law and Chancery for the County of Elizabeth
City continued and held, at the Court House thereof on Monday the 1st day of October
1834 —

Alexander Wilson vs Robert Maitland

Plt vs

John M. Hodges, Samuel C. Hodges in his own right and as adm^r of John Hodges
and Mordecai books comtee of the estate of James Herbert Sur and Wm a h
Herbert, John Deane, Thomas Deane, Edw. Gray, and Mary Ann his wife,
John Thomas and Julia his wife and James Davis and Ann his wife. Dfs.

This cause came on this day to be heard on the original and amended
Bills and answers, and exhibits filed, and was argued by counsel. On consid-
eration whereof it is decreed and ordered, that the Dfs. James Davis and Nancy
his wife, Peter Ann Burley, John Deane, Thomas Deane Edward Gray and
Mary his wife, John Thomas and Julia his wife, James and Caroline

in an
an?

Deans be and they are ~~hereby~~ ^{strictly} perpetually restrained and enjoined from spend-
ing any title whatsoever to the land in the proceedings mentioned directed to the
said Nancy Davis as one of the heirs of James Herbert decd. or as the heir
of any of his children claiming under the said James Herbert, or as the heir
of her mother, claiming as heir of any of her children, heirs of the said James
Herbert, or directed to the said Reta Ann Burley as one of the heirs of Robert
Burley, or to the said John Deans, Thomas Deans, Mary Ann Gray,
Julia, Thomas and James and Caroline Deans as heirs of Raley Deans
decd. who was also one of the heirs of Robert Burley decd. And that said Davis
and wife, John Deans, Thomas Deans, Edward Gray and Mary Ann his
wife, John Thomas and Julia his wife and James and Caroline Deans and
Reta Burley the three last being infants by Joseph H. Robertson who is
hereby appointed a commissioner for this purpose respectively released with
special warranty against themselves respectively, and all persons claim-
ing under them respectively, all their right and title to the said land directed
in the proceedings as follows, in the forty acres of land more or less situated
on the East side of the Southern Branch of Elizabeth River in the Parish of
Saint Brown nearly opposite the lands of Gosport, which was purchased
by the said Robert Burley of said James in the year 1794, to the Defendants
Samuel Hodge, John M. Hodge, Ann Hodge, George Hodge and Amanda
Hodge, heirs of John Hodge decd. and their heirs and assigns, which said release
the married female Defts are to acknowledge before two Magistrates in the mode
required for the examination of females covert. And the above named adult
male defendants and Joseph H. Robertson for the defts. James and Caroline Deans
and Reta Burley are to acknowledge either before two Magistrates in the mode
prescribed for recording of deed, or before the Clerk of the County Court of Norfolk
there to be recorded, within thirty days after they shall be respectively served
with a copy of this order. And the Court reserving to the plaintiffs their
lien on the said Land for the purchase money and interest, doth further ad-
judge order and decree, that unless the defendant Samuel C. Hodge as Executor
of John Hodge decd. will admit a pettle of his intestate sufficient to pay the
sum of fifteen hundred dollars with interest thereon from the 25th day of
December 1810 that he render before Joseph H. Robertson of the County of
Norfolk who is hereby appointed a Special commissioner for this purpose
an account of his transactions as executor of his intestate, and the said
commissioner is directed to report to this Court what has become of the suit
formerly pending in the Superior Court of Law of Norfolk County and which
was carried to the Court of Appeals as mentioned in the answer of John
Hodge.

Commrs. Officed Norfolk 11th Apr. 1835

The commissioner has to report that the parties to the decree in this cause were duly served with a copy - and that Samuel C. Hodges the administrator of John Hodges dec. admits assets of his intestate sufficient to satisfy the sum with interest mentioned in said decree, as appears by his admission in writing on the said decree herewith annexed. The commissioner has further to report that owing to the absence of James Davis and of the parties to the said decree, the release has as not yet been executed as to him - All of which is most respectfully submitted.

Jos. H. Robertson Spl.

Commr. "

I admit that I have assets as administrator of Int. Hodges sufficient to satisfy the sum of fifteen hundred dollars with interest from 24th day December 1810

Commrs. Officed Norfolk 23rd Apr. 1835

Samuel Hodges admr. of John Hodges

In addition to the report formerly made in this cause, the Commrs. has to add that the suit referred to in the decree, has been dismissed as appears by a copy of the order of Court herewith filed

Jos. H. Robertson Commr.

At a Circuit Superior Court of Law and Chancery held for Norfolk County on the 3rd day of June 1833

James Davis and Ann his wife

against John Hodges

Plt. & Def. ^{Plt.} Upon a writ of Right

By consent of the parties by their attorneys, it is ordered that this suit be dismissed

Wm. H. Wilson cler.

And

At a Circuit Superior Court of Law and Chancery for Elizabeth City County, continuing at held at the Court house thereof on Saturday the 25th day of April 1835.

Alexander Wilson and Robert Mattheus

Plts.

John M. Hodges, Samuel C. Hodges in his own right and as admr. of Int. Hodges dec. (Moderator took notice of the estates of James Herbert Sew and Elsie Herbert, Mrs. Davis, Thos. Davis, Edwards Gray, and Mary Ann his wife Int. Thomas at Sals his wife and Luc Davis and Ann his wife. Def.

This cause came on this day to be heard again on the papers formerly read and the reports of the commrs. made pursuant to the decree of the 12th of October last and the admissions of the Defendant Samuel C. Hodges that he has assets as admr. of Int. Hodges deceased sufficient to satisfy the sum of fifteen hundred dollars with interest from the 24th of December 1810, and was argued by counsel on consideration whereof the Court doth argue order and decree that the Def. Samuel Hodges admr. Int. Hodges dec. pay to the plaintiffs the said sum of fifteen hundred dollars with interest from the 24th December 1810 at the rate of six per cent per

sum till paid. And by contract of parties, each is to pay his own costs

a Copy sent *Wm. M. Mendenhall*

Virginia

At a Circuit Superior Court of Law and Chancery, held for the County of Elizabeth City the 7th day of October 1834

Cooper. *Cooper*
Topping & *Topping*
Records *Records*
Be it remembered that on the 19th day of January 1833 Charles A. Cooper, one of the clerks of the said Superior Court a subpoena to answer against Jm. P. Topping administrator of Robert Topping, George Cooper and before his wife, William Topping and Mary Topping widow of Robert Topping which follows in these words

The Commonwealth of Virginia

To the Sheriff of Elizabeth City County Greeting

Subj. *Subj.*
We command you that you summon John P. Topping administrator of Robert Topping, George Cooper and before his wife, William Topping and Mary Topping widow of Robert Topping to appear at the clerk's Office of the Circuit Superior Court of Law and Chancery for Elizabeth City County on the first Monday in February next being the next day of the said Superior Court of Law and Chancery, to answer a Bill in Chancery exhibited against them in the said Court by Charles A. Cooper, and unless they shall answer the said Bill within four months thereafter the Court will take the same for confessed and decree accordingly. And this they shall in no wise omit under the penalty of £100. And have then there this writ Witness Westwood S. Armes-Dead clerk of our said Court the 19th day of January 1833 in the 57th Year of the Commonwealth

Wm. M. Mendenhall

Sheriff's return: "Executed on Jm. P. Topping, George Cooper and wife and William Topping"

Wm. M. Mendenhall

To the Judge of the Superior Court of Law and Chancery for the County of Elizabeth City

Bill

Humbly complaining sheweth unto your honor, your Orator Charles A. Cooper of the County of Elizabeth City. That on the 10th August in the Year 1820 your Orator entered into a contract with a certain Robert Topping of said County for the purchase of thirty five acres of Land, more or less, which was his full portion of Land to which he was entitled, as one of the heirs of his father Topping, for which your Orator agreed to pay the sum of one hundred and twenty five dollars, of which your Orator paid down the sum of seventy dollars, the balance to be paid thereafter, and for which Land the said Topping bound himself to make a title. The witness of said contract in writing is herewith filed, signed by the said Robert Topping, which is prayed by your Orator to be taken and considered as part of this his bill. That your Orator has been for several years in possession of the said Land, and now has it, in his possession, the same having been laid off as the share of the said Robert Topping in his father's estate. The said Robert Topping is now dead, without having ever given a title to the said Land, altho he was often called upon and required to make a deed for the same, and altho your Orator was always ready to pay the balance of the purchase money. The said Topping left two children his heirs at Law, to wit, before Topping now wife of George Cooper and William Topping now an infant, the said before and William being his only children. He also left a widow whose name is Mary

Topping: and Jno. P. Topping is ^{deceased} of the said Robert Topping. Your Orator is advised
 that he has a right to come into this Court to ask that the title to the said Land may be de-
 cided to him by deed, conveying all the right of the said Robert Topping in and to the same,
 or on failure to get such title, that he may recover back the money he has paid as afore-
 said, besides interest and costs; the parties aforesaid having refused their reason-able
 things out of Court. In tender consideration whereof and for as much as your Orator
 is without relief in the premises; save by the aid of a Court of Equity where matters of
 this kind are properly cognizable, To the end therefore, Your Orator prays that the said
 Jno. P. Topping administrator of Robert Topping, George Cooper and Tephoe his wife, William
 Topping and Mary Topping widows of Robert Topping may be made parties defendant to this
 bill, with able and proper words to charge them as such, that they be compelled on their
 oath to answer the same and that as fully as if the several allegations thereof
 were here again in due form repeated and may thereunto particularly interrogated, and
 that thereupon the said Deft: may be decreed to convey the said Land to Your Orator, or
 that the said Land be conveyed to him in the usual mode; that the said agreement be
 specifically decreed, and if necessary Your Orator may have a decree for the money and
 interest he has paid as afore said; that all necessary and proper accounts may be
 taken, and generally that Your Orator may have such other and further relief in the
 premises consistent with equity and good conscience. May it please the Court
 to grant to your Orator the premises. And your Orator will ever pray &c.

R. M. Grandin for Pettr

Exhibit filed with the Bill

Receipt of Charles A. Cooper the sum of twenty dollars in part of one hundred and
 twenty five for twenty five acres of Land for the same more or less which is my full portion
 of a Land which I am entitled as one of the Legatees of Mr. Topping, which I
 bind myself and my heirs to give title to. 10 Aug. 1825

Robert Topping

Gully Mead

Answer
of Topping

The Answer of Jno. P. Topping executor of Robert Topping, dec. to a bill of complaint
 exhibited against him and others, in the Circuit Superior Court of Law and Chancery
 for Elizabeth City County by Charles A. Cooper.

This respondent in answer to the material allegations of said bill says
 that he admits that Robert Topping his testator contracted in his life time with the
 complainant for the sale of the tract of land specified in the said bill, at the price
 therein stated; he also admits that twenty dollars part of the purchase money
 was paid by the complainant to the said Robert and that the complainant
 is now and has been ever since the time of the contract of sale in the possession
 of said land, but he denies that the complainant ever called on said Robert
 to execute a conveyance therefor, tendering the residue of said purchase money,
 and the contrary this respondent has always heard and believes that the reasonable
 said Robert did not deliver to the complainant a deed for said land was that after
 the complainant obtained possession of the same, he always refused to pay
 the residue of the purchase money. This Respondent further states that since
 the death of said Robert, he has repeatedly requested the complainant to pay the
 balance of said purchase, and take a deed for the Land, this respondent being
 invested with power by the will of said Robert to sell the same, a copy of which

is herewith filed marked A. and further in order that this respondent might settle up finally the estate of said Robert and avoid all difficulties that might arise between him and the complainant respecting the said land: this respondent before the institution of this suit has actually offered to lend the complainant an amount equal to the balance of the purchase money, if to the complainant would by a trust deed, secure the payment thereof within a reasonable time. But the complainant always declined this very fair proposal, thinking as this respondent believes, that he can by a suit in chancery recover the land, without paying such balance.

Having answered what this respondent believes to be the material allegations in the complainant's bill, he prays hence to be dismissed with his reasonable costs by him in his defense in this behalf expended.

Elizabeth City County to wit:

John D. Topping

In J. D. Topping whose name is subscribed to the foregoing answer, this day personally appeared before me a Justice of the Peace of and for the said County, in said County and being first duly sworn on the holy Bible, made oath, that the facts and statements in said answer contained, and set forth are so far as they relate and are stated as of his own knowledge true - and so far as they are derived from the knowledge or information of others, he believes them to be true.

Given under my hand this 19th day of September in the year 1834.

Exhibit filed with answer

W. M. Hope

In the name of God amen I Robert Topping of Elizabeth City County, and State of Virginia being weak in body, but of perfect sense and memory, do make, constitute this my last will and testament. First of all I resign my soul into the hands of that God who gave it me; desiring that my body should be buried in a decent and christian like manner; and further proceed to dispose of my Estate in manner and form as follows to wit: First of all, my desire is that all my land should be sold, and my interest in bridge stock to pay my just debts, and if not enough, as much of my personal property, as may be required. Secondly, after my debts are paid, I leave and lend to my loving wife Mary all the rest of my estate to let her as personal during her life for her support, and my son William A. C. Topping for the benefit of cloathing and schooling him until he arrives to the age of sixteen: then to be bound out to a trades Thirdly after the death of my wife, I give and bequeath Mary, C. Anderson and her and furniture of the second choice, one cow and calf and one desk, one Braspat, to her and her heirs for ever, fourthly, I give and bequeath to Nancy Dennis daughter of my second wife five dollars, to her and her heirs forever. Fifthly, after the death of my wife I leave unto my daughter Zephora Cooper and Negro woman by the name of Ester during her life and then to her heirs forever. Sixthly, I give and bequeath to my daughter Zephora Cooper one cow and calf to her ever. Seventhly, after the death of my wife I give and bequeath to my son William A. C. Topping and half of my Estate whatever or whenever it may be to him and his heirs forever, and other half to my surviving grand children, to be equally divided among them. Last of all I appoint my brother John D. Topping executor of this my last will and testament. And thusly whereof I have herewith, set my hand and affixed my seal this eighteenth day of February, eighteen hundred and twenty, nine Signed sealed and acknowledged in presence of

John D. Evans, Wm. Street, Edw. Ironmonger, Joseph Shetter

Robert Topping

Ans. of
Apr. 2, 1834

as well

At a Court held for the County of Elizabeth City the 22nd of October 1834.

The last Will and testament of Robert Topping dec^d was proved by the oaths of William Stuart Edward Ironmonger and Joseph Shelton three of the subscribing witnesses and ordered to be recorded. And on the motion of Int. P. Topping the executor therein named who made oath thereto and with Nathl. Spidars and Preston Watson his securities entered into and acknowledged a bond in the penalty of four thousand dollars conditioned according to law, certificate was granted him for obtaining a probat thereof in due form.

Testo *Wm. Stuart* Clerk

Ans. of
Mr. Topping

The answer of Wm. Topping an infant of tender years, by John Tatt his Guardian ad litem to a Bill of complaint exhibited against him and others by Charles N. Cooper in the Superior Court of Law and Chancery for the County of Elizabeth City.

This respondent answering unto himself all first or objections to the said bill for its error and imperfections; in answer thereto, saith, that he hath no knowledge of the matter and things in the said bill stated, and so far as his interest is to be affected thereby, he requires that the complainant may be required to maintain his case by proof; and having answered he prays to be hence dismissed with costs &c. without that &c.

The affidavit of Preston Watson of lawful age taken before me a commissioner duly appointed by the Circuit Superior Court of Law and Chancery for Elizabeth City County to take depositions this 27th day of September 1834 pursuant to the annexed notice. Between the hours specified therein, to be read as evidence in a suit in said Court depending in which Charles N. Cooper is plaintiff and Int. P. Topping Executor of Robert Topping dec^d per Cooper Zephora his wife William Topping and Mary Topping widows of Robert Topping dec^d and defendants. This Affiant being first duly sworn and the holy Bible deposited, and saith, that in the fall of 1826 Robert Topping went to Cooper's the plaintiff, where this Affiant was at work, it was agreed between the plaintiff and said Topping to meet at Hampton the next Saturday, to receive a deed for the land in controversy, and to execute a deed of trust to secure the balance of the purchase money; after the said Topping had gone away, the plaintiff said he'd be damned if he would give the deed of trust on the land; that if he would not take his simple bond, he might get the money as he could. And on the Saturday, on which they had agreed to meet, as above stated, this Affiant was still at work on the plaintiff's farm, and the Affiant enquired of the plaintiff if he intended to go to town, that day as he had agreed, he replied, he should not go at all.

Preston Watson

Sworn to and subscribed before me this 27th day of September 1834

Wm. Spide Comm^r

At a Circuit Superior Court of Law and Chancery for the County of Elizabeth City continued and held at the Court house thereof on Tuesday the 7th of October 1834

Charles N. Cooper

Plt

Int. P. Topping adm^r of Robert Topping, George Cooper and Zephora his wife, William Topping and Mary Topping widows of Robert Topping

Def^s

On motion of the infant defendant, John Tatt is assigned his guardian to defend him in this suit, and the cause came on this day to be heard on the bill the answer of said infant and the adm^r and exhibit and deposition filed, was argued by counsel

and it appearing that the subpoena duces tecum in this cause has been executed on the other defendants and the bill filed more than four months, and they still failing to answer, on the plaintiffs motion his bill is taken for confessed, as to them, and thereupon the Court doth assign order and decree that the plaintiffs pay to the defts. J. & P. Topping and of Robert Topping deceased the sum of fifty five dollars, with interest thereon from 1st Augt. 1826 and paid, being the balance of the purchase money for the tract of Land in the Bill mentioned. And the Court doth further assign order and decree that when the said sum of money and interest shall be paid, that Int. Taltt a special commr for the purpose and behalf of the defts execute to the plffs a deed without warranty for the Land in the bill mentioned, and that the defendant John P. Topping out of the estate of his intestate in his hands to be administered, pay to the plffs his costs about his suit in this behalf expended. And the infant defendant is allowed one year after he shall come of age to show cause against this decree if any he can.

a Copy with *Wm. Armistead* etc

*Armistead
Booker
Phillips
Record.*

Virginia

At a Circuit Superior Court of law and Chancery for Elizabeth City County continued and held at the Court house thereof on the 21st day of April 1836.

Be it remembered that heretofore to wit at rules held in the Clerk's office of the Chancery District Court directed by law to hold at the former Capitol in the City of Williamsburg in November 1825 came Armistead Booker an infant of tender years suing by John Jones his next friend by his counsel and filed then and there his Bill against Elijah Phillips administrator with the will annexed of William Armistead decd and Robert Lowy and John P. Armistead In chancery, which bill follows in these words to wit: "I humble William Browne Judge of the Superior Court of Chancery for the Williamsburg District. Humbly complaining sheweth unto your Honor yr. orator Armistead Booker orphan of George Booker and an infant of tender years suing by his next friend John Jones, that on the 27th day of Febry 1817 one William Armistead of the County of Elizabeth City (in which County the father of yr. orator lived and died and in which your orator has always resided) called late Shff. (commonly known by the appellation of Swamp Armistead - was by an order of the Court of said County appointed guardian to yr. orator & entered into his bond with Robert Lowy and John P. Armistead his securities for the discharge of his duties as guardian in the sum of twenty thousand dollars Copies of which order and bond are herewith filed and prayed to be taken and considered as a part of this yr. orator's Bill. That the sd. William as guardian to yr. orator reduced to his possession all the Estate of yr. orator of which he has dissipated and wasted much of the residue has given no account, or if any a very imperfect and erroneous acct. That some time during the present year (1825) the sd. William departed this life and administration of his estate with the will annexed was granted to Elijah Phillips as will appear by a Copy of an order of the County Court of Elizabeth City hereto annexed as a part of this bill

Bill

*Phillips
fils
Bill*

Bill - That on Booker at Bedford County I now read when the guardianship of s^r William Armistead was appointed guardian by ex orator but only title of any of your orators estate was ever sold and to him, all which may have been transferred to him by orator has received or will receive the full benefit of. The claims of your orator upon the said William were repaid to him in his life time & since to the said Elijah, but have been totally disregarded they having failed to come to any fair & full settlement of your orators estate either with his s^r second guardian or with himself or any friend for him, all of which is contrary to equity and good conscience & tends to the manifest injury of your orator, in tender consideration whereof & as much as your orator is remediless in the premises save by the aid of a Court of Equity where matters of this sort are properly cognizable, to the end therefore that the said Elijah Phillips ^{admirer} with the will assumed of William Armistead and of the said Robert Lowry and Mrs P. Armistead, may be made parties respondent & heard with apt and proper words to charge them as such, and upon their corporal oaths compelled full free & perfect answer to make to the several allegations of this bill as particularly as if they were here again repeated & they thereto especially interrogated, and that your Honor will decree a settlement of the transactions of the said Lowry upon the Estate of your orator before a Court of this Court & will order any estate which may remain & the balance found due to be received and paid over by your orator & give such other and further relief as your Honor may seem fit, your orator prays the Court the gracious writ of Subpoena of Ja^s Sample att^o for Coun^l

Exhibit
filed with
Bill

Elizabeth City County Court 27th February 1817

William Armistead (late Sheriff) is by this Court appointed guardian to Armistead Booker orphan of Geo. Booker and and thereupon he with Robert Lowry and John P. Armistead his securities entered into and acknowledged a bond in the penalty of twenty thousand dollars, and did so according to Law

a Copy True

Wm Armistead att^o

Know all men by these presents that we William Armistead, Robert Lowry and Mrs P. Armistead are held and firmly bound unto William Brown, Samuel Wattle, Francis M. Armistead and Robert Lowry Gent. Justices of the Court of Elizabeth City County, now sitting in the sum of twenty thousand dollars to the payment whereof, well and truly to be made to the said Justices and their successors, we bind ourselves and each of us, our and each of our heirs, executors and administrators jointly and severally, firmly by these presents sealed with our seals, and dated this 27th day of February Anno Domini one thousand eight hundred and seventeen in the 41st year of the Commonwealth. - The Condition of the above obligation is such, that if the above bound William Armistead his executors and administrators, shall well and truly pay and deliver, or cause to be paid and delivered unto Armistead Booker orphan of Geo. Booker deceased, all such estate or estates

as now is, or are, or hereafter shall appear to be due to the said orphan when, and as soon as he shall attain to lawful age, or when thereto required by the Justices of the said Court, so also keep harmless the above named Justices, their and every of their heirs, executors and administrators, from all trouble and damage that shall or may arise about the said estate; then the above obligation to be void otherwise to remain in full force sealed and delivered in presence of the Court.

Wm Armistead
Robert Long
John P. Armistead

a copy Test

Wm Armistead att.

Elizabeth City County Court 25th August 1825

Elijah Phillips one of the executors named in the last will and Testament of William Armistead deceased, appeared in Court and renounced the executorship, and Esq. Barker the other executor being dead, on the motion of the said Elijah Phillips who made oath thereto, and with James Phillips, Matthew Hubbard and Barker, whose his securities entered into and acknowledged a bond in the penalty of eight thousand dollars and therein according to law Certificate is granted him for obtaining letters of administration on the estate of William Armistead deceased with his will annexed in due form

a copy Test

Wm Armistead att.

death of
Armistead
suggested

at rules held in the clerk's office of the said Chancery District Court of Williamburg in the month of February 1826 the death of the defendant Dr. P. Armistead was suggested.

Receiv
misc

At rules, held in the clerk's office of the said Superior Court of Chancery for the Williamburg district the 10th day of May 1826 Armistead Barker an infant by Dr. James his next friend against Elijah Phillips adm with the will annexed of Wm Armistead Robert Long and another def. The subpoena as awarded in this cause being returned waived on the defendants above named and three months since the filing the bill and the service of the subpoena having elapsed, and they still failing to answer the bill of the plaintiff is taken for confessed as to those defendants and the Court will proceed, at a future day, to decide the matter thereof, unless the said defendants, on or before the fifth day of the term next after they shall have been served with a copy of this order, show cause to the contrary

sheriff return

June 14th 1826

and

James Robbans 128
executed on Elijah Phillips, Robert Long is
Ex W. McCandlish & M for Wm McCandlish
M. S. lib. 1826

At rules held in the clerk's office of the said Superior Court of Chancery for the Williamburg district in the month of June 1826 the death of the defendant Robert Long was suggested, and a writ of scire facias was awarded and issued to revive. This writ in the name of Elizabeth Long adm of Robert Long dec. and in the name of Esq. James Barringer Shff of Elizabeth County and Comtee of the estate of John P. Armistead dec. which writ with the return thereon

Thereon made is in the ~~deeds~~ and figures following to wit:

Score facias

"The Commonwealth of Virginia. To the Sheriff of Elizabeth City County, greeting. Whereas Armistead Bookes an indent by John Jones his most friend heretofore exhibited to the our Superior Court of Chancery directed by law to be taken at the former Capitol in the City of Williamsburg his bill of complaint against Robert Lowry & John P. Armistead & others. Whereupon sundry proceedings have been had, and appears from the record and files of the said Court, but before a final decree could be pronounced in the cause the above named defendants departed this life, and administration on the estate of the said Robert Lowry has been granted to Eliza Lowry as administratrix and the estate of the other defendant J.P. Armistead has been committed to the hands of Isaac Frommenger Sheriff of Stafford County for administration, and being supplicated for the proper remedy in this behalf, and being willing that what is right and just should be done therein, command you, that you make known according to law, to the said Eliza Lowry and Isaac Frommenger that they be before the Judge of our Superior Court of Chancery, at the former Capitol aforesaid on the first day of the next term, to shew if any thing for themselves they have or can say, why the said suit should not be proceeded in to a final decree against them in their characters aforesaid; and be in all things in the same plight and condition as it was at the time of the decease of the said Robert Lowry and J.P. Armistead, and further to do and receive what our said Court shall in that part consider. And have them thence writ. Witness Edmund Christian Clerk of our said Court at Williamsburg the 29th day of June 1826 and in the 50th year of the Commonwealth.

Ed. Christian C.L.

Endorsed. "Executed on Elizabeth Lowry administratrix of Robert Lowry and July 3 1826. Executed on Isaac Frommenger July 10 1826.

J. Savary Shff.

At rules held in the Clerk's office of the said Superior Court of Chancery for the Williamsburg District in the month of July 1826. The Respondent Phillips filed his answer to the Complaints bill which is in these words & figures to wit:

Answer

"The separate answer of Elijah Phillips admor of Wm. Armistead and to a bill of complaint exhibited against him and others in the Chancery District Court of Williamsburg by Armistead Bookes.

Answer of
Phillips

This Respondent now and at all times hereafter saving and reserving unto himself all manner of benefit of exception to the said bill, for its manifest errors and imperfections, in answer thereto, as is so much thereof as he is advised it is necessary & proper for him to answer unto, answereth and saith that he admits the qualification of Wm. Armistead as guardian of the person, he also admits the death of Wm. Armistead & his own qualification on Armistead's estate. In regard to any waste committed by Wm. Armistead of the pth estate, this acct. is not informed, altho it may be true, but he has heard that the pth lived fully

up to the income of his estate. He is willing to release an account of the guardianship when the Court shall direct him so to do.

This Respondent thinks it proper to state that the assets of Wm. Amistead which have come to his hands are not likely to be sufficient to pay all his testators debts, his estate being very much embarrassed with debts of every description. That there are three other suits depending in this Court, against the defendant all of which are attempting to recover debts of the same dignity with the debt of the plaintiff. If there is not enough to pay all, they ought to divide pari passu among the suits is in the name of Simpson & Sarah his wife formerly Sarah Wallace, to recover a guardianship account - another of these suits in the name of Euphan Graves to recover an executional account, and the other in the name of Robinsons to recover an executional account, all of which are relied on as if formally pleaded. He asks that all these suits may proceed together.

He also states that Wm. Amistead was a tutor of John Shepherd to whose estate his largely in debt, as will appear by an official copy of the same herewith filed as part of this answer. This debt is guardianship of Shepherds children & has intermarried with Shepherds widow, by which events he has a right to receive the whole of that estate. He claims to retain this in preference to any other account of the same dignity due to others; and having assumed he prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained. without that is.

City of Williamsburg 20th inst.

Elijah Phillips personally appeared before me William M. Moody, Alderman of said City and made oath that the matters stated in the foregoing answer on his own knowledge or belief are true and those stated on the knowledge or belief of others he believes to be true. Given under my hand and seal this 8th July 1826.

Wm M. Moody Ald.

Exhibit filed with the foregoing answer.

Elizabeth City County Court 22nd December 1808.

On the motion of William Amistead who made oath, and with Robert Amistead Senr, and William Cooper his securities entered into and acknowledged a bond in the penalty of Ten thousand dollars conditioned according to law certificate is granted him for obtaining letters of administration on the estate of John Shepherd and in any form

a copy under Wm Amistead clks.

at rules held in the Clerk's office of the said Superior Court of Chancery for the Williamsburg district on the month of August 1826. This suit was revived in the name of Elizabeth Levy administratrix of Robert Levy and of Edward & Annemonger Sheriff of Elizabeth City County and Clerk of the estate of John P. Amistead deceased, and at a Superior Court of Chancery held for the Williamsburg District on the 12th January 1827 - This cause came on this day to be heard between the plaintiff and defendant Phillips upon the Bill.

The answer of that defendant relative and was signed by Counsel. On another whereof the Court with advice order and decree that the said defendant administrator with the will annexed of William Amistead account before one of the Commissioners of this Court an account of the transactions of the said Amistead as guardian of the infant plaintiff Booker, and also an account of his own transactions in the estate of William Amistead which accounts the Commissioner is directed to examine state and settle, and report the same to the Court with any matters special or stated deemed pertinent by himself or which may be required by the parties to be so stated, and on the motion of the defendant it is further ordered that the Commissioner state an account of all the claims of equal or superior dignity to the plaintiff which may exist against the said William Amistead's estate and report the same to the Court with any matters deemed pertinent by himself or which may be required.

At a Superior Court of Chancery held for the Williamsburg District on the 14th day of January 1828.

It is supposed that the plaintiff Amistead Booker has arrived to the age of twenty one years.

At a Superior Court of Chancery held for the Williamsburg District on the 5th day of July 1828.

On the motion of the plaintiff by Counsel leave is given him to amend his bill and make new parties. On the 7th day of July 1828 at the same term of the Court on motion of the plaintiff by Counsel Thos B Allen is assigned guardian ad litem to the infant defendant William Allen to defend him in this suit. And on the 18th day of July 1828 for reasons appearing to the Court, the order entered in this cause on the seventh day of the present month is set aside and on the motion of the plaintiff by Counsel Thos B Allen is assigned guardian ad litem to the infant defendants Mr Allen & Elizabeth Amistead and John Lamy is assigned guardian ad litem to the infant defendant Mr Lamy & Thos Lamy to defend them in this suit.

Amended Bill

To the Honorable William Waine Judge of the Superior Court of Chancery for the Williamsburg District, respectfully complaining sheweth unto your Honor. Your orator Amistead Booker in this his bill of amendment filed by leave of the Court. That he heretofore filed his bill of complaint in this Court against Elijah Phillips administrator of William Amistead deceased late guardian of your complainant, Peter and Warringer late Sheriff of Elizabeth City County and administrator of Jas P. Amistead deceased & Elizabeth Lamy widow of Robert Lamy deceased which said Robert Lamy and Jas P. Amistead deceased were owners of said Wm. Amistead as guardian of your complainant. The object of said Bill was to cause the payment of such sum of money as might be due by said guardian to your complainant on a settlement of his guardianship account before one of the Commissioners of this Court.

Your complainant now begs leave to state, that he is apprehensive that the personal estate of said guardian, and his securities afore said may prove insolvent and he has been informed that the said Robert Lamy and Jas P. Amistead deceased seized & disposed of real property of considerable value to wit. the former of a tract or parcel of land containing between ten and fifteen acres of land situated

situated in the County of Elizabeth City with valuable improvements thereon
 and a clear tract the said Robert Leary at the time of his death
 owned the latter of a tract of land called Squimel Swamp which has
 been subject to a lease of trust to J. R. Leary as Trustee for the benefit
 of John Leary. Your orator charges that the said John Leary is dead
 and the said J. R. Leary & J. H. Leary are his executors, and that the
 said last mentioned tract is more than sufficient to pay the sum
 of money aforesaid which it was intended to secure, there being at
 the time only a small part thereof due. Your complainant
 further alleges that the said John P. Amistead and Estelle Leary
 aimed to be widow Frances all her estate real and personal
 that the said Frances is also dead having left a last will and tes-
 tament duly executed according to law, in which she gave the tract
 of land aforesaid to John P. Amistead her only child - but if he and
 before he attains the age of twenty one year the same was devised
 to Virginia Allen wife of Wm. B. Allen, Estelle Amistead and her
 children and their heirs. Your orator further charges that the
 said John P. Amistead last mentioned departed this life under the
 age of twenty one year whereby the said Virginia Allen and
 Estelle who were then alive became entitled to the said tract of land
 that Virginia departed this life in the ^{day} leaving
 for her only child William Allen which entitles the said Wm. B.
 Allen to a life estate in her portion thereof as devised by the last will
 that Estelle is also dead leaving no issue and an only child
 Elizabeth Amistead, who is entitled to her father's portion of said
 land. The said William Allen & Elizabeth Amistead are infants
 of tender years. Your orator is advised that he has a right to re-
 gain an execution of said trust by a sale of the tract subject
 and after the payment of the money due to said Trustees for
 the benefit of said John Leary to demand an application of the
 same of the proceeds of the sale is the payment of the amount
 due is taken from his guardian aforesaid, except it shall ap-
 pear that upon the settlement of the several administrations
 accounts stand in this cause, that the said guardian and his
 executor or either of them left personal property sufficient to
 pay the money due from his said guardian. In this and there-
 fore that the said Eliza Phillips widow of Wm. Amistead, the
 said Elizabeth Leary widow of Robert Leary and in her own right a
 widow & child of said Robert Leary are entitled to share in the
 aforesaid tract of land, and John Leary, Robert Leary, William
 Leary and Thomas Leary only children and heirs of said Robert Leary
 and the said Isaac Brownson & his wife are aforesaid & some of
 the estate of the said J. P. Amistead, the said J. R. Leary trustee
 as aforesaid and the same Nathl. P. Leary & his wife & Leary widow of
 John Leary, the said Estelle Amistead, the said Thomas B. Allen
 the said William Allen the said Elizabeth Amistead, and Robert
 Leary & his wife and the wife and heirs of Frances Amistead & her
 may be made parties respondents hereto and answers in such
 a manner fully to state and reply to the allegations herein
 contained, and in the original bill and forth & charges, which
 is prayed to be taken in part of this bill. Your orator prays

I John P. Armistead of Elizabeth City County and State of Virginia do make and ordain this my last will and Testament. I give to my beloved wife Frances S. Armistead all of my estate both real and personal to her and her heirs forever. I do hereby appoint my said wife executrix to this my will. — In testimony whereof I have hereunto set my hand and affixed my seal this 8th day of May 1820

John P. Armistead

Signed Sealed & acknowledged
in presence of

G. Armistead

Henry

Wm H. Tyler

At a Court held for the County of Elizabeth the day of August 1820. This will was produced therein and proved by the oaths of G. Armistead, Wm H. Tyler two of the Justices thereof and ordered to be recorded

John P. Armistead

a copy sent A. R. Cary Clerk

In the name of God, I Frances S. Armistead of the County of Elizabeth and State of Virginia, being sick and weak in body, but of sound and disposing mind and memory do make and ordain this my last will and Testament as follows: I give unto my son John P. Armistead all my estate real and personal, but if he should die under the age of twenty one years I then give the said estate real and personal to G. Armistead, Centalo Armistead and Virginia Allen and their heirs forever.

It is my further will and desire, should my said son John P. Armistead die without lawful issue that all my property both real and personal before mentioned shall go to the said G. Armistead, Centalo Armistead and Virginia Allen and their heirs. It is further my will and desire that all my said estate real and personal before mentioned should be sold and the proceeds put out to the best advantage on interest or otherwise for the benefit of my said son John P. Armistead or the children before mentioned. In testimony whereof I have set my hand and seal this 19th day Nov^r 1823

Witness

Robert Lively

Geo. P. French

A. R. Cary

F. S. Armistead

At a Court held for the County of Elizabeth the 27th day of November 1823. The last will and Testament of Frances S. Armistead was produced therein, and proved by the oaths of Robert Lively Geo. P. French and A. R. Cary Justices thereof and ordered to be recorded. And on the motion of Robert Lively who made oath thereto and with Geo. B. Allen & G. Armistead his security entered into and acknowledged, a bond according to law certificate is granted him for obtaining letters of administration on the estate of s^d decedent with her said will annexed in due form.

John P. Armistead
a copy sent A. R. Cary Clerk

At a Superior Court of Chancery held for the Williamsburg District the 15th of January 1829

On motion of the p^lt by Counsel Thos B Allen is assigned guardian to the infant child Wm Allen and Elizabeth Annistead to defend them in this suit.

At a Superior Court of Chancery for the Williamsburg District held on the 14th January 1830

On the motion of the p^lt by Counsel for reasons appearing to the Court. It is ordered that Thos B Allen be displaced as guardian ad litem of the Inf^t defendant in this cause and that Chas L Wingfield Marshal of this Court be assigned their guardian to defend them in this suit. — and thereupon the said Wingfield guardian ad litem as aforesaid filed his answer to the Bill and Amendment to the same & signed following —

Answer of Inf^t filed by their Guardian

The answer of Charles L Wingfield Marshall of the Superior Court of Chancery for the Williamsburg District as guardian ad litem to the Infant defendants to a Bill of Complaint and Amendment of the same filed against them & there by Annistead Booker. Thos Respondent in answer to said Bills says he has no knowledge of the transactions mentioned in said Bills and calls for proof of all matters therein contained material to their interests — Having considered he prays to be dismissed with his costs &c Chas L Wingfield g^r ad litem

At a Superior Court of Chancery for the Williamsburg District held on the 1st of February 1830

On motion of the p^lt by Counsel leave is given him to amend his bill — and

At a Circuit Superior Court of Law and Chancery held for James City County and City of Williamsburg on the 12th Sept. 1831

The defendant Contato Annistead being dead this suit cannot at present be further proceeded in.

At a Circuit Superior Court of Law and Chancery held for James City County and City of Williamsburg on 6th February 1833

On the motion of the p^lt by Counsel leave is given him to amend his bill and make new parties —

2^d Amended Bill

The Amended Bill of Annistead Booker filed by leave of the Court first read and obtained, in the case of the said Booker p^lt and Elijah Phillips adm^r of Wm Annistead & others def^s.

The p^lt in addition to what is alleged and set forth in the original & amended bills already filed begs leave to say that the s^d Annistead the intestate of the def^t Phillips left no real estate out of which any portion of the p^lt demand could be satisfied that Contato Annistead is dead & no one will by which he arrived to Thos B Allen the land derived by him under the will of Frances S Annistead — That Robert Lively who was adm^r of Frances Annistead is dead, but your orator believes it is unnecessary to proceed further against the personal estate of Frances that the def^t Robert Lively and an infant unmarried & intestate leaving the defendants John, William & Thomas as sons his heirs who are now of full age. So the end therefore that this suit may be revived and stated in the name of your

your orator against Elijah Shillips a minor of Wm Armistead Elizabeth Armistead daughter & heir of Will Armistead a cousin of Frances Armistead, Wm Allen an inf^t (by his guardian ad litem) only child & heir of Virginia Allen and a cousin of Frances Armistead, Thomas Allen late husband of said Virginia and a cousin of Centals Armistead who was a cousin of Frances Armistead, the said Frances being sole cousin of John P. Armistead a security of Wm Armistead as guardian of Armistead Barker. John, William and Thomas Loring heirs of Robert Loring a security of Wm Armistead as guardian of Armistead Barker & Elizabeth Loring a widow of said Robert, Paus and Commissioner Sheriff of Elizabeth City County & com^{rs} & adms^{rs} of Inc P. Armistead & Will Loring surviving ex^{ors} of Inc Loring may be made parties type hereto with apt and proper words to charge them as such and be compelled on oath to answer the allegations of this & the original & amended bill before filed so far as the same is not already done & that the said Will Loring may say whether the trust deed from Inc P. Armistead for the benefit of his testator has been closed, whether any debt has been sustained to a child, & if sustained by reason of the securityships and liabilities mentioned in the deed of Trust filed with the last amended bill & that your Honor will grant full relief in the premises. y^r orator prays the writ of Subpoena &c. and

At a Circuit Superior Court of law and Chancery held for this County of James City and City of Williamsburg on the 28th Dec^r 1833

For reasons appearing to the Court this cause is transferred to the Circuit Superior Court of law and Chancery for Elizabeth City County.

At a Circuit Superior Court of law and Chancery for the County of Elizabeth City held on the 28th day of April 1835.

This cause came on to be again heard on the papers formally read and the amended bills filed by leave of the Court, and the answers of the infant defendants Elizabeth Armistead and Thomas Allen by their guardian ad litem to which the pl^t replied generally, and as to the other defendants upon process, the subpoenas against them having been duly returned and the bills filed more than four months and they still failing to answer, on the motion of the pl^t his bill is taken for confessed as to those defendants, and was argued by counsel on consideration whereof the Court doth adjudge order and decree that the Master Commissioner of this Court take the accounts or account to be rendered by Elijah Shillips, and that Elizabeth Loring adm^{tr} of Robert Loring render before the same Commissioner an account of her transactions on the estate of her intestate in taking which account the Commissioner is directed to class the debts paid by the said Elizabeth Loring according to their dignity, and shew how much has been expended in the discharge of duty of inferior dignity to that of the plaintiffs, and should the amount found due by the adm^{tr} on such accounts after excluding debts of inferior dignity to that of the pl^t be found insuffi-

8) insufficient for the discharge of the balance which may be found due to the plaintiff by his guardian, that in that event the same commissioners take an account of the probable annual and fee simple value of the lands owned by the said Robert Loring at the death time of his death, also an account of the probable annual and fee simple value of the land left by Mrs P. Armistead at the time of her death, and which have passed into the hands of his heirs or devisees or their heirs or devisees and which had not been aliened before the 7th of July 1828 which accounts the same commissioners is directed to examine stated and settle and to the Court report with any matters specially stated occurred present by himself, or which may be required by the parties to be so stated.

On the 9th day of June in the year 1835 writs of Scire facias as were issued to revive this suit against William Calow admor of Thomas B. Allen an^r and John T. Loring adm^r de bonis moribus of Robert Loring an^r returnable to the first day of the then next term which writs with the endorsements thereon are in the following words and figures to wit:

Scire facias

The Commonwealth of Virginia, To the Sheriff of the City of Williamsburg. Greeting. Whereas Armistead Booker an infant by John Jones his next friend heretofore exhibited to the Superior Court of the Chancery created by law to be holden at the former Capitol in the City of Williamsburg his bill of Complaint against Elijah Phillips admor with the will annexed of William Armistead an^r Robert Loring and John P. Armistead whereupon sundry proceedings have been had as appears from the records and files of the said Court as also from the records and files of the circuit Superior Court of law and chancery for the County of James City and City of Williamsburg to which said Court the cause aforesaid was removed by operation of law, and as also appears from the records and files of the circuit Superior Court of law and Chancery for the County of Elizabeth City to which said last named Court the cause aforesaid hath been transferred, but before a final decree could be pronounced in the cause Thomas B. Allen who was executor and sole devisee of Corstons Armistead (who was by leave of the Court made a party to this cause subsequent to the exhibition of the original bill) departed this life, and administration de bonis moribus on the estate of the said Thos. B. Allen an^r hath been in due form of law granted to William Calow, and the said Armistead Booker, now of full age, having supplicated us for a proper remedy in their behalf, and were being willing that what is right and just should be done. Therefore we command you that you make known according to law to the said William Calow admor de bonis moribus of Thomas B. Allen an^r that he be before the Judge of our circuit Superior Court of law and chancery for Elizabeth City County at the Court house of said County on the first day of October Term next to show if any thing for himself he hath

or knows to say, why the said suit should not be proceeded in to a final decree against him in his character aforesaid, and be in all things in the same plight and condition as it was at the time of the death of said Thos B Allen, and further to do and receive what our said Court shall in this part consider. And have then then this writ Witness W. J. Armistead clerk of our said Court the 9th day of June 1835 in the 29th year of the Commonwealth.

W. J. Armistead ckh

Endorsements

July 6th 1835 executed

Geo. W. McCandlish Sec. W.

The Commonwealth of Virginia

To the Sheriff of Norfolk County Greeting

Whereas Armistead Becker an infant by his Jones his next friend heretofore exhibited to the Superior Court of Chancery decreed by law to be holden at the former Capitol in the City of Williamsburg his bill of Complaint against Elijah Phillips adm^r with the will annexed of the said Armistead an^d Robert Long and his P. Armistead Whereupon sundry proceedings have been had on appeals from the records and files of said Court, as also from the records and files of the Circuit Superior Court of law and Chancery for the County of James City and City of Williamsburg to which said Court the cause aforesaid was removed by operation of law and also from the records and files of the Circuit Superior Court of law and Chancery for the County of Elizabeth City to which said last mentioned Court the cause aforesaid hath been transferred, but before a final decree could be had in the cause the letters of administration granted to Elizabeth Long on the estate of Robert Long an^d were revoked and annulled, and administration de bonis non on the estate of the said Robert Long an^d hath been in due form of law granted to John T. Long, and the said Armistead Becker now of full age having supplicated us for a proper remedy in this behalf, and we being willing that what is right and just should be done Therefore we command you that you make known according to law to the said John T. Long adm^r de bonis non of Robert Long an^d that he be before the Judge of our said Circuit Superior Court of law and Chancery for Elizabeth City County at the Court house of said County on the first day of October term next, to shew if any thing for himself he hath or knows to say, why the said suit should not be proceeded in to a final decree against him in his character aforesaid, and be in all things in the same plight and condition as it was at the time of the revocation of the powers of the said administration, and further to do and receive what our said Court shall in this part consider. And have then then this writ. Witness W. J. Armistead clerk of our said Court the 9th day of June 1835 in the 29th year of the Commonwealth.

W. J. Armistead ckh

Commissioners Report

Amistead Barber

An account with William Amistead his Guardian

1817
2nd 3rd

- By hire of Jack Amistead this year \$80.00
 Payer's first deposition marked A proves that he hired Jack Amistead for the year 1818 at the price of \$80. and as there is no proof of the rate of hire for the year previous, the Commr has affirmed the price paid in 1818 as a fair value for 1817. In Payer's 2^d deposition marked B he estimates the average value of Jack Amistead at one hundred dollars & annum. but as he paid in the year 1818 only \$80 hire for him, it is presumed that the estimated rate of hire should not take effect till after that period.
- By hire of Stephen for this year 100.00
 Payer's 2^d dep. marked B estimates the hire of Stephen at \$100 & annum.
- By hire of Robin for this year 60.00
 This item is proved by the dep. of Thos Skinner marked C.
- By hire of Peter Barber this year 80.00
 This price is established by the 2^d dep. of Payer marked B.
- By hire of William Barbours this year 33.00
 Mr. Barthe in his dep. marked D proves that he hired William in 1821 '22 '23 & '24 and that the price for the first year was \$33. and is silent as regards the price for the remaining 3 years. As the boy William in 1817 when he came into the possession of Amistead the find. was very young being about 11 years old (as appears by Barber's dep.) and consequently not worth so much as in 1821 the Commr has thought it fair to take the price in the year 1821 as his average value & annum.
- By hire of Mary a boy for this year 20.00
 The dep. of M^r C Robertson marked E proves that Mary was hired by him in 1818 at \$20. and subsequently for a larger sum. The Commr in the absence of proof of this hire for 1817 has affirmed that paid in 1818 as proper to be charged for the first year.
- By hire of Sam Leay this year 20.00
 In the absence of any proof whatever with regard to the hire of this boy who as appears by Barber's dep. was very young when he came to the possession of Amistead the find. (being then about 9 years of age) the Commr has thought proper to fix upon \$20.00 as the average annual value of this boy for the time he was in possession of Amistead.
- By hire of Lucy Barber this year 40.00
 Mr. Barthe in his dep. marked D proves that Lucy was worth in 1820 \$40. and the Commr in absence of any proof with regard to her hire previous and subsequent thereto, has taken that as her average value.
- By hire of Lucy an ordinary young woman 20.00
 There is no proof of the rate at which this woman hired, and as she is represented as an ordinary woman the Commr has taken 1/2 the price at which Lucy Barber hired as the average rate of her hire.
- By hire of Kelly an ordinary young woman 20.00
 For this woman the same rate of hire is affirmed by the Commr her situation being in all respects similar to Lucy above named.

Carried forward

By am^e brought forward

By hire of a very an elderly woman with children
Payer in his dep^t marked & proved that he hired this
woman for victuals and cloaths.

By hire of a French an elderly woman with children

By hire of Kate a likely girl

There is no evidence going to prove the hire of this girl and
as she was only 6 years old when she came to the hands of
Amistad the gr^e as appears by Bookers dep^t and remained
in his possession till she was 13 years old the Comm^r has paid
upon \$10. as her average hire of annum

By hire of Mary a likely girl about the same age

There being no proof of this girls hire and her situation being
in all respects similar, the same rate of hire is offered
by the Comm^r.

To Comm^r on \$493 negro hire @ 5¢ cent. 24 65

To Board cloathing and schooling the ward this year 150 00

This am^e for board &c was proved by the deposition of M^r C Payer
and Thos Skinner marked &c

To this sum to balance

318 35

\$493 00 \$493 00

1817

Dec 31.

1818

Dec 31

By hire of Jack Amistad

proved by Payer's dep^t &c

\$ 80 00

By hire of Stephen prov^d by Payer's 2^d dep^t B.

100 00

By hire of Robin

80 00

prov^d by Payer's dep^t &c — Payer in his second dep^t marked B
estimates the average annual value of Robin at \$60. but as he
hired him this year at the price of \$80 the Comm^r thinks
the actual and not the estimated hire ought to be credited.

By hire of Peter Barber

80 00

this hire is established by Payer's 2^d dep^t & marked B.

By hire of William Barber

33 00

see Barber's dep^t B. and the Comm^r remarks thereon in the
account of last year.

By hire of David

20 00

see Roberts's dep^t E.

By hire of Sam Leary

20 00

see Comm^r remarks on this item in the acc^t of last year.

By hire of Lucy Barber

40 00

see Barber's dep^t B.

By hire of Lucy an ordinary young woman

20 00

see Comm^r remarks on this item in the acc^t for last year.

By hire of Kelly an ordinary young woman

20 00

By hire of Amy an elderly woman with children victuals &c

By hire of Anna

10 00

By hire of Kate

see Comm^r remarks on this item in last year's acc^t.

By hire of Mary under similar circumstances

10 00

By balance due last year brought forward

318 35

Interest on that balance one year \$ 19 10

To Comm^r on \$513 @ 5¢ cent.

25 65

To board &c of ward this year

150 00

To am^e to balance

665 70

\$19 10 \$831 35 \$831 35

71
1819
Dec. 31.

By line of Jack Amistead	see Payers 2 ^d exp. B	\$100 00	
By line of Stephen	see Payers 2 ^d exp. B	100 00	
By line of Robin	see Payers 2 ^d exp. B	60 00	
By line of Peter Barber	see Payers 2 ^d exp. B	80 00	
By line of William Barber		33 00	
By line of David	see Robertsons exp. E.	30 00	
By line of Sam Leary		20 00	
By line of Lucy Barber		40 00	
By line of Lucy an ordinary young woman		20 00	
By line of Sally	do do	20 00	
By line of Amy an elderly woman with children		" "	
By line of Anna	do do	" "	
By line of Kate		10 00	
By line of Mary		10 00	
By balance last year		655 70	19 10
Interest on that balance one year			39 35
To Comm ^o on \$523 @ 5 p c ^t		26 15	
To board &c of ward this year		150 00	
To balance am ward		1002 55	
		\$1178 70	\$1178 70 \$58 44

1820
Jan 31

By line of Jack Amistead		100 00	
By do of Stephen		100 00	
By do of Robin		60 00	
By do of Peter Barber		80 00	
By do of Wm Barber		33 00	
By do of David		30 00	
By do of Sam Leary		20 00	
By do of Lucy Barber		40 00	
By do of Lucy an ordinary woman		20 00	
By do of Sally	do do	20 00	
By do of Amy an old woman with children		" "	
By do of Anna	do do	" "	
By do of Kate		10 00	
By do of Mary		10 00	
By balance am last year brought forward		1002 55	58 44
Interest on that balance one year			60 15
To Comm ^o on \$523 @ 5 p c ^t		26 15	
To board &c of ward this year		150 00	
To am ^o to balance		1349 40	
		\$1525 55	\$1525 55

92 1821
Nov 31

By line of Jack Amsted	\$ 100 00
By do of Stephen	100 00
By do of Robin	60 00
By do of Peter Barber	80 00
By do of William Barber	33 00
By do of David	40 00
By do of Jim Leary	20 00
By do of Lucy Barber	40 00
By do of Lucy an ordinary woman	20 00
By do of Kelly	20 00
By do of Amy an old woman with children	"
By do of Arena	"
By do of Kate	10 00
By do of Mary	10 00
By balance due last year	1349 40
Interest on that bal one year	80 96
To Comm ^r on \$ 523 @ 5 p c t	26 15
To board of of Ward this year	150 00
To am ^t to balance	1696 25
	\$ 1872 40 \$ 1872 40 \$ 199 55

93 1823
Nov 16

1822
Nov 31

By line of Jack Amsted	100 00
By do of Stephen	100 00
By do of Robin	60 00
By do of Peter Barber	53 00
from Skinnis dep ^t (C) it is provid that he hired Peter this year for \$ 50 and also Payer in his dep ^t B estimates his yearly hire at \$ 80 yet the Comm ^r thinks whenever the actual hire can be ascertained it ought to be credited rather than the estimated hire	
By do of William Barber	33 00
By do of David	40 00
By do of Jim Leary	20 00
By do of Lucy Barber	40 00
By do of Lucy an ordinary woman	20 00
By do of Kelly	20 00
By do of Amy an old woman with children	"
By do of Arena	"
By do of Kate	10 00
By do of Mary	10 00
By bal due last year brought forward	1696 25
To Comm ^r on \$ 503 @ 5 p c t	25 15
To Board of of Ward this year	150 00
To am ^t to balance	2024 10
	\$ 2199 25 \$ 2199 25

1823
Nov 31

By line of Jack	100 00
By do of Stephen	100 00
By do of Robin	60 00
By do of Peter Barber	80 00
By do of William Barber	33 00
By do of David	40 00
By do of Jim Leary	20 00
By do of Lucy Barber	40 00
By do of Lucy an ordinary woman	20 00
By do of Kelly	20 00
By do of Amy an old woman with children	"
By do of Arena	"
By do of Kate	10 00
By do of Mary	10 00
	533 00 301 32

93 1823	By amts brought forward.	533 00	301.32
	By balance am last year	2024 10	
	Interest on that balance one year		121.44
Nov 16	By this sum rec ^d of Reub ^r Barber w th Geo Barber saw the former guardian of Amistad Barber on settlement	1008 48	
	By this sum being the estimated value of a young negro woman named Hannah sold by Amistad gen ^l as provided by the dep ^t of Payne. Marked F	300 00	
	By this sum being the estimated value of two women and child sen names unknown belonging to the ward and sent by the gen ^l to New Orleans for sale	700 00	
	By the deposition of C. Hubbard Marked G. it appears the said negroes were sent by a Mr. Wells to New Orleans for sale and the proceeds onl ^y to \$900. Not being able to obtain that price Wells left them in the hands of a Commission Merchant for sale, who dis- posed of them but at what price is not provided, but it is stated that Wells rec ^d for them only one or two hundred dollars in consequence of the failure of the merchant, under these cir- cumstances the Comm ^r thought it best to ascertain as near as practicable the value of said negroes here at the time they were sent away and credit that amount. It appears by Payne's exp ^t F. that a young woman hired by him from Amistad the gen ^l was during the same year sold to a spe- culator by o ^r Amistad for what price he knows not but he estimates her value at \$300. Taking that then as the current value of such property at that time and adding the sum of \$50 each for the children, the Comm ^r has ac- crued at the sum credited		
	To Comm ^r on \$1541.48 being the am ^t of negro here and the sum accrued from Barber the former Gen ^l	77 07	
	To Board &c of ward this year	150 00	
	To am ^t to balance	4338 51	
		\$4565 58	\$4565 58 \$422.76

1824	By hire of Jack Amistad	100 00	
	By do Stephen	100 00	
	By do Robin	60 00	
	By do Peter Barber	80 00	
	By do William Barber	33 00	
	By do David	40 00	
	By do Sam ^l Gay	20 00	
	By do Lucy Barber	40 00	
	By do Lucy an ordinary woman	20 00	
	By do Nelly do do	20 00	
	By do Mary an old woman with children	" "	
	By do Anna do do	" "	
	By do Kate	10 00	
	By do May	10 00	
	To Comm ^r on \$533. @ 3 p ^{ct}	26 65	
	To Board &c of ward this yr	150 00	
	To this sum to balance	4694 86	
	By am ^t am last year Brought forward	4338 51	\$22.76
	Interest on that bal ^y one year to 31 Dec.		260 31
		4871 51	4871 51 683.07
	To balance am ward 31 Dec. 1824		
	add Interest	\$4694 86	\$5377 93
		683 07	

Estate of William W. Phillips
In account with Elijah Phillips adm^r

1825 Aug 21	To this sum paid to Sheriff of Elizabeth City County who had levied for taxes and clerks fees.	96.70	
	To paid James Fawcett Crier at sale	72.00	
Dec 5	To this sum paid by E Phillips as security upon a judgment in litem intestate in his life time ad. M ^r . Young	117.012	
Nov 21	By To this sum rec ^d of R ^d Dively on acc ^t of sale of slaves conveyed by intestate to R ^d Dively in trust for benefit of R ^d 's wife after paying said claim	249.85	
1826 July 6	To this sum retained by E Phillips on acc ^t of the interest of his wife the widow of M ^r . Shepherd in the estate of M ^r . Shepherd to which Wm Ammended was indebted as adm ^r as per settlement of his adm ⁿ acc ^t being $\frac{1}{3}$ of the balance due on R ^d settlement and $\frac{2}{9}$ of $\frac{1}{5}$ part, the share of David Shepherd one of the children of said M ^r . Shepherd who died intestate, with interest to this day	953.89	
	To this sum retained on acc ^t of Eliza Shepherd a child of John Shepherd $\frac{1}{5}$ and $\frac{2}{9}$ of $\frac{1}{5}$ part of balance due by said acc ^t and interest to this date, the widow of M ^r . Shepherd having qualified as her guardian and administered with Elijah Phillips	428.05	
	To like sum retained for Mary Shepherd another child under similar circumstances	428.05	
	To like sum ret ^d for M ^r . Shepherd another child under like circumstances	428.05	
	To paid clerk the bill ticket for recording appraisement	11.18	
8	To paid James Temple att ^r fees & for services to adm ^r	43.00	
	To this sum retained for cent of farm as sold to intestate in 1825 by E Phillips	45.00	
	To paid clerk of Gen Court ticket	18	
	To paid clerk chancery Co. do	3.01	
	To paid R ^d McCanalish att ^r his fees	30.00	
July 12	By am ^t sales of Estate on this day	2191.70 1/2	
	To Comm ^r on \$2441.55 @ 5 per	122.07	
Dec 31	This sum due the adm ^r this day	288.64	
	Interest thereon from 12 July 1826 to this day	7.93	
		\$2730.19 1/2	2730.19 1/2
1827 Jan 5	To paid M ^r C. Whiting for coffin	18.00	
Mar 6	To paid Single bill and int ^r to M ^r . Herbert E Phillips security	88.80	
	To paid Clerk Chancery Court ticket	2.30	
	To paid do do	1.50	
April 24	To paid Jas Perrell Ddly for J. Savage Ddly this sum the am ^t of a judgment granted by a Justice of the peace and from which E Phillips appealed and which was affirmed	24.69	
	To am ^t due last year bro ^r forw ^d	288.64	
	Interest on that am ^t to 31. Dec		17.31
	By am ^t rec ^d of A. Allen	42.00	
	By do of B. Storer	5.00	
	To Comm ^r on \$47.00 @ 5 per	2.35	
	balance due the adm ^r	379.28	
		426.28	426.28

95
1828
Dec. 22

To this sum paid Thos B. Allen atty of Capt Wm Armistead being the
am^t of Judgm^t and interest on intestate in his life time
2. balance due last yr brought f^{wd} 81 57
Interest on that bal to 31. Dec^r 377 78
By balance due adm^r 478 85
478 85 478 85

1829
Mar 26

To paid Ro McConnelick att^r for Rob Shildap ex^r this sum being the
am^t of a penal bill executed by intestate and E Phillips as his
security to Cay's ex^r 93 85

Aug 28

To paid Jas. Sample att^r his fee 20 00
To paid Alex M^rone att^r his fee 13 00
To paid the chancery clk his ticket 88
To paid do do 1 81
To paid clerk Elg City Comby do 8 13
To balance due last yr brought f^{wd} 478 85
Int on that bal to 31. Dec^r 616 52
By balance due adm^r \$616 52 616 52

1830

To paid Clerk Elg City his ticket 70
To bal due last yr brought f^{wd} 616 52
Interest on that bal to 31 Dec^r 36 99
By bal due adm^r 617 22
617 22 617 22

1832
July 23

To this sum paid In^r 7 May Shff on execution from the chancery court
in favor of Eliza Robinson one of the heirs and coheirs of Sarah
Armistead upon whose estate Wm Armistead
as ex^r 190 44

To this sum paid att^r under like circumstances in favor of
Fanny Robinson 190 44

To this sum paid att^r under like circumstances in favor of
William Robinson & Mary, Fanny, and Eliza Robinson infants by
Ro R Robinson their next friend 41 66

July 14

To this sum paid W^r E Moore Shff on execution from Sup^r C^t Chy^r J^r
City in favor of Mary Robinson one of the heirs of said Sarah
Armistead 195 57

To bal due 31. Dec^r 1830 bro^d f^{wd} 617 22
Interest on that bal 2 yrs to 31. Dec^r 74 06

Dec 31

By bal due adm^r 1235 35
\$1235 35 1235 35

1835
Aug 27

To paid Ro McConnelick fees as att^r for services rendered
estate 20 00

To balance due 31. Dec^r 1832 bro^d f^{wd} 1235 35
Interest on that bal to 27th Aug 1835 197 03

By balance due the adm^r this day
27. August 1835 1255 35

\$1255 35 1255 35 384 80

Am^t of principal due the adm^r 1255 35
27th Aug 1835
am^t of Interest up to that time 384 80
\$1640 15

The items of \$953.89 \$428.05 \$428.05 and 428.05 were re-
ceived by Phillips adm^r of Armistead under the following cir-
cumstances; William Armistead the intestate of said

Phillips was the administrator of Mrs. Shepherd who died intestate leaving a widow and five children to wit. Aunt B. Mary L., Elizabeth, John, and David Shepherd - The widow qualified as the guardian of three of them to wit. Mary, Elizabeth and John and intermarried with E Phillips. a suit was brought by Phillips wife, Rich. D Brown and Aunt B his wife formerly Aunt B. Shepherd against said Administrator for settlement of his account with the estate of said Shepherd. Whereupon the said Administrator agreed with them to settle his acc^t before Geo Hope, Robert Siney and Sam Watts which was accordingly done in the presence of said Administrator, and the books and papers exhibited by him, which settlement is of record in Elderly County Court by which a balance was due to Shepherds estate of \$1354.80 with interest from 17th October 1810. of this sum the said Phillips in right of his wife was entitled to one third, and each of the five children to one fifth of two thirds, David and an infant intestate and unmarried and of his share it is considered the said Phillips in right of his wife is entitled to $\frac{2}{3}$ & each of the children entitled to $\frac{2}{5}$ except Aunt B who was only of the half blood being by another mother - The said Phillips having as guardian appropriated considerable sums of money to the maintenance of his said ward, Mary & Eliza after arriving at age transferred to him any & all interest they had in the estate of Mrs. Shepherd as distributees, and he has also settled with Mrs. Shepherd his other ward and obtained from him a receipt in full for the balance due him from his father's estate. as it is considered that the legally qualified guardian is the only person bound to assert the claims of the infant ward of Mrs. Shepherd against the estate of William Administrator, and as he was the advisor of Administrator, the Court allowed the retainer of the said items for his wife, ward as well as the retainer of the sum due himself and wife which sums are ascertained upon the principles aforesaid.

W. Administrator Court.

The Estate of Robert Long and

In account with Elizabeth Long his ad^r

26 Mar 11.	To paid Samuel Williford constable the am ^t of a Ind ^{pt} of the estate in favor of Thos S. King founded on a single bill	12 19 $\frac{3}{4}$
29	To paid Mary King in part of a bond in suit as per acct	100.00
May 25	To paid Sheriff of Elbert County in part for taxes for 1824	24.00
Oct 23	To paid T. Sawyer Sheriff the am ^t of a Ind. in the estate recovered by Mr. O. King on a motion as security for Ro. Long in a bond payable to Sheriff as per receipt	75.35
26	To paid John Smith his acc ^t for coffin as per acct.	8.00
	To paid Reunion Whiting am ^t of two Ind ^{pts} obtained or intestate in his life time upon single bill and received ago ^t his ad ^r as per receipt	186.12
Nov 20	To paid R. W. French constable am ^t of a Ind. in favor of Hammond as per acct. founded upon a single bill	18.57
Dec 29	To paid Ro. Seymour in part of a Ind. in intestate in his life time founded upon single bill as per acct.	30.00

1822
July 1

Sept 2

Dec. 19

June 30
July 3

1822

1826 77

To paid Saml. Willford am ^t am ^t of bond payable to John & Ann Willford	15 32	
To paid clerk Elizbeth County ticket	4 05	
To paid T. Savary Shff for Taxes 1826	21 08 1/2	
By am ^t Sales of Negro Man Lewis		350 00
To Comm ^r on \$350 @ 5%	17 50	
By balance due the adm ^t		162 16 1/4
	\$ 512 16 1/4	\$ 512 16 1/4

1827 July 31

To balance due the adm ^t last year	162 16 1/4	
To paid Ro Symons in full of his Indgn. as p ^r adm ^t	36 88 1/2	
To paid Jas McVaughan Shff in full for Mary & Benj ⁿ Ind. furnished on a bond as p ^r adm ^t	188 40	
To paid Rells am ^t of Mat ^r St. Nyles Ind. furnished on single bill as p ^r adm ^t	75 88	
To paid Jas McVaughan Shff am ^t Ro Swilg's Ind. on bond as p ^r adm ^t	110 09	
To paid Rells Dub ^t Williams Ind. in part on single bill as p ^r adm ^t	37 17 1/2	
To paid Rells am ^t of Jas. Samples Indgn. founded on a undeg ^t as p ^r adm ^t	74 95	
Sept 21 To paid James Thomas adm ^t of Elliott am ^t of his Ind. founded on two penal bills as p ^r adm ^t	74 28	
To paid Jas McVaughan Shff am ^t of Woodward's Ind. on single bill as p ^r adm ^t	71 81	
To paid In ^t Le Robertson am ^t of Kelown am ^t as p ^r adm ^t	3 50	
To paid Rich ^d William in full for his Indgn. as p ^r adm ^t	105 85 1/2	
To paid Jas McVaughan Shff am ^t of Hodder Ind. on single bill as p ^r adm ^t	63 48	
To paid Rells in part of Hodder's 2 ^d Indgn. founded on single bill as p ^r adm ^t	31 77	
Nov 19 To paid Jas McVaughan am ^t of In ^t W. Jones fees as Coroner for holding inquest on negro man John belonging to the estate as p ^r adm ^t	5 00	
To paid Jas McVaughan Shff his am ^t for Taxes p ^r adm ^t	15 90	
To paid clerk of Gent Court his tickets	36	
To paid clerk Elizbeth County two tickets for granting adm ^t and returning of the estate & fees for defending sundry Ousts ag ^t the adm ^t	15 73	

June 30
July 31

By am ^t Sales of woman Polly	75 00	
By am ^t of Ind. int. & Costs vs. Herbert	51 09	
By am ^t Sales of negro man Jim	350 00	
By auto of Hampton	350 00	
By auto of Girl Betsey	140 00	
By auto of Child Emily	106 00	
To Comm ^r on \$1072 @ 5%	53 60	
By balance due the adm ^t		71 73 3/4
	\$ 1143 82 1/4	\$ 1143 82 1/4

1828

To balance due the adm ^t brought forward	71 73 3/4	
To paid clerk Elizbeth County ticket	1 88	
By balance due the adm ^t		73 61 3/4
	\$ 73 61 3/4	\$ 73 61 3/4

98 1830

To balance due about brought forward
By Am^r sales of estate due this day
To Comm^r on \$328.84 1/2 @ 5%
To balance due the estate

73 6 1/2	
16 44	328 84 1/2
238 78 1/2	
328 84 1/2	328 84 1/2

1831
Jan^y 22
July 12

To paid In^r to Robertson his ac^t for services rendered
as an att^r 5^c
To paid In^r J. Simple his ac^t for Medicines & c^t
By balance due the estate last year
brought forward
To balance due the estate this day

40 12 1/2	
5 25	
	238 78 1/2
193 41	
238 78 1/2	238 78 1/2

To balance due the estate 12th February 1831.

193 41

A statement showing the probable annual and fee simple value of the real estate of Robert Sany at the time of his death

The fee simple value of the house and lot left by Robert Sany at the time of his death is estimated by Geo C Payer in his 2^d deposition marked B at \$300.00 and the annual value thereof at 33.00

A statement showing the probable fee simple and annual value of the real estate of John P. Armistead at the time of his death

The fee simple value is estimated by Geo C Payer in his 2^d deposition marked B at \$900.00 and the annual value at 30.00

Upon his real estate John P. Armistead executed a deed in trust to Robert Cary for the benefit of Geo. Cary in the year 1820 to guard the said John Cary from any injury he might sustain in consequence of his becoming security for said Armistead in a bond executed to Robert Saunders for the sum of \$362.07 as well as in a variety of instances both in the individual and representative character of J. P. Armistead

Commissioners Office Hampton 30th Sept 1835.

Decker

Phillips

The Commissioner appointed the 12th day of August 1835, and issued his notice for the parties in this cause to attend before him, and the accompanying paper marked (M) shows that all the parties had due notice except Elizabeth Sany widow of Robert Sany and. On the day fixed Geo. to Robertson appeared for Mrs. Sany, and the plaintiff and Elijah Phillips also attended. The attorney for Mrs. Sany furnished the necessary vouchers to enable the Commissioner to make up her account of her transactions in the estate of Robert Sany - But neither the pl^t nor Elijah Phillips having the necessary vouchers and testimony to enable the court to proceed in making up the other accounts desired, the case was continued till the 2^d of September - On the 27th August the pl^t filed the depositions of Decker, Payer, Payne and Kissner here with returned and marked A. F. C. - On the 2^d September, the day to which the case was adjourned the same parties again attended, and Phillips furnished evidence enabling the

Came to make up the account of the transactions in Arnistead's estate and the case was considered as wanting by consent of parties for further testimony on the part of the plt. - on the 7th September the depositions of Fayer and Robertson now returned marked B. & C. were filed by the plt. - on the 12th of same month the deposition of Andrew Bartle now ret^d marked D. was also filed by the plt. and on the 26th September the depositions of C. Hubbard now ret^d marked E. was also filed by the plt. The parties having no other testimony to introduce the Commissioner proceeded to make up the amended account marked F. by which it appears that the estate of William Arnistead is indebted to Arnistead Brother his coad in the sum of \$5377.93 of which \$4694.86 is principal entitled to carry interest from the 31 day of December 1824 - The account herewith returned and marked G. is a settlement of the transactions of Elijah Phillips on the estate of William Arnistead by which it appears that the estate of said Arnistead is indebted to said Phillips the adm^r in the sum of \$1640.15 of which \$1255.35 is principal entitled to carry interest from the 27th day of August 1835 - The account herewith returned marked H. is a settlement of the transactions of Elizabeth Dany on the estate of Robert Dany sen^r by which it appears that the administratrix is indebted to the estate of her intestate in the sum of \$1934.41 principal to carry interest from the 12th February 1831 - The statement herewith returned marked I. shews the probable annual and fee simple value of the real estate left by Robert Dany at the time of his death, and the statement herewith ret^d marked J. shews the probable annual and fee simple value of the real estate left by M^{rs} P. Arnistead at the time of her death, all which is respectfully submitted.

Wm Arnistead Comm^r.
E. C. C.

At a Circuit Superior Court of Law and Chancery held for the County of Elizabeth City the 6th October 1835

This cause by consent of parties came on this day again to be heard on the papers formerly read together with the report of the Comm^r made pursuant to the orders of the 12th Jan^y 1827 & 28th April 1835. To which no exceptions have been filed, and was argued by Counsel, on consociation whereof the Court confirming said report doth adjudge order and decree that the plt. receive of the def^t Elijah Phillips as adm^r with the will annexed of Wm Arnistead and the sum of \$5377.93 with interest on \$4694.86 from Dec^r. 31. 1824 till paid and the costs of this suit to be paid out of any profits of the said William Arnistead which may hereafter come into the hands of the said Phillips to be administered after paying the sum of \$1640.15 with interest on \$1255.35 from Aug^t. 27 1835 till paid, which sum with interest as aforesaid is due to the said Phillips by the estate of Wm Arnistead and which he has a right to retain in preference to the plaintiff's claim - And as there are no profits of the said Wm Arnistead to pay the plt^s claim the Court doth further adjudge order and decree that the plt. receive of Elizabeth Dany as adm^r of Robert Dany one moiety of

The said sum above decreed to the plt. to wit the sum of \$2688.96½
 with interest on \$2347.43 from Decr. 31. 1824 till paid & which
 sum the said Elizabeth Lowry is hereby agreed to pay to the plt.
 \$193.41. with interest from the 12th of February 1831 till paid
 and the residue thereof to be paid by the said Elizabeth out of any
 appts of her intestate which may come hereafter to her hands
 to be administered. And the other moiety of the said sum
 above decreed to wit the sum of \$2688.96½ with interest on
 \$2347.43 from Decr. 31. 1824 till paid the Court doth further
 decree to be paid to the plt. by Edward Brannenger late Sheriff of
 Elizabeth City County and comtee of the estate of Dr. P. Armistead
 out of any appts of the said Dr. P. Armistead which may here
 after come to the hands of the said Brannenger to be administered
 But as this decree will be inefficient against the estates
 of the said Robert Lowry and Dr. P. Armistead for the sums above
 respectively decreed against them under appts 1^o The Court doth
 further adjudge order and decree that unless the defendants or
 some one of them who are interested in the real estate of Robert
 Lowry and Dr. P. Armistead shall within 90 days from this date
 pay to the plt. the sum above decreed against the estates of the
 said Ro. Lowry & Dr. P. Armistead respectively and the costs of this
 suit, that then and in that case the Sheriff of this County who is
 hereby appointed a commissioner for this purpose sit at public auction
 for cash before the Court house door of this County on some
 Court day after giving 30 days notice of the time and place
 of sale by advertisement posted at the Court house door, the real
 estate of which the said Robert Lowry and Dr. P. Armistead res
 pectively and owned - the former of which is then described in
 the proceedings - to wit a tract of land in the County of Elizabeth
 City containing 10 or 15 acres, being the tract on which the said
 Robert Lowry resided at the time of his death, with its im
 provements and appurtenances - and the latter a tract in
 the same County called Sawyers Swamp which the said Dr. P.
 Armistead had subject to a deed of trust to A. R. Cary in trust
 for the benefit of Dr. Cary - and out of the proceeds of the
 sale of Robert Lowry's pay to the plt. the sum of \$2688.96½
 with interest on \$2347.43 from Decr. 31. 1824 till paid and
 a moiety of the costs of this suit, after deducting therefrom
 the sum of \$193.41. with interest from the 19th of July 1831
 till paid above decreed previously to be paid by the said Eliza
 beth Lowry and out of the proceeds of the sale of Dr. P. Armistead's
 land pay to the plt. the sum of \$2688.96½ with interest on
 \$2347.43 from Decr. 31. 1824 till paid and a moiety of the costs
 of this suit, and the balance of any, of the said sales, hold
 subject to the future order of this Court. The sale of Ro. Lowry's
 land to be made subject to the decree of this decree therein
 and the said Sheriff is directed to make a report to this
 Court of this proceedings under this decree

and